

SEVENTIETH

ANNUAL REPORT

OF THE

**NATIONAL LABOR  
RELATIONS BOARD**

FOR THE FISCAL YEAR

ENDED SEPTEMBER 30

**2005**



# NATIONAL LABOR RELATIONS BOARD

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## Members of the Board

ROBERT J. BATTISTA, *Chairman*

WILMA B. LIEBMAN

PETER C. SCHAUMBER<sup>1</sup>

DENNIS P. WALSH<sup>2</sup>

RONALD MEISBURG<sup>3</sup>

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JOHN F. COLWELL

TERENCE F. FLYNN

GARY W. SHINNERS

PETER D. WINKLER

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LESTER A. HELTZER, *Executive Secretary*

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LAFE E. SOLOMON, *Director, Office of Representation Appeals*

ROBERT A. GIANNASI, *Chief Administrative Law Judge*

PATRICIA M. GILBERT, *Acting Director of Information*

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## Office of the General Counsel

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*Division of Operations Management*

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*Division of Enforcement Litigation*

BARRY J. KEARNEY

*Associate General Counsel*

*Division of Advice*

GLORIA J. JOSEPH

*Director*

*Division of Administration*

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<sup>1</sup> Term expired August 27, 2005. Reappointed to serve a recess appointment August 31, 2005.

<sup>2</sup> Term expired December 16, 2004.

<sup>3</sup> Term expired December 8, 2004.

## LETTER OF TRANSMITTAL

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NATIONAL LABOR RELATIONS BOARD,  
*Washington, D.C. May 1, 2006*

SIR: I submit the Seventieth Annual Report of the National Labor Relations Board for the fiscal year ended September 30, 2005.

Respectfully submitted,  
ROBERT J. BATTISTA, *Chairman*

THE PRESIDENT OF THE UNITED STATES  
THE PRESIDENT OF THE SENATE  
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES  
*Washington, D.C.*

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# **I**

## **Operations in Fiscal Year 2005**

### **A. Summary**

The National Labor Relations Board, an independent Federal agency, initiates no cases: it acts only on those cases brought before it. All proceedings originate from filings by the major segment of the public covered by the National Labor Relations Act—employees, labor unions, and private employers who are engaged in interstate commerce. During fiscal year 2005, 29,858 cases were received by the Board.

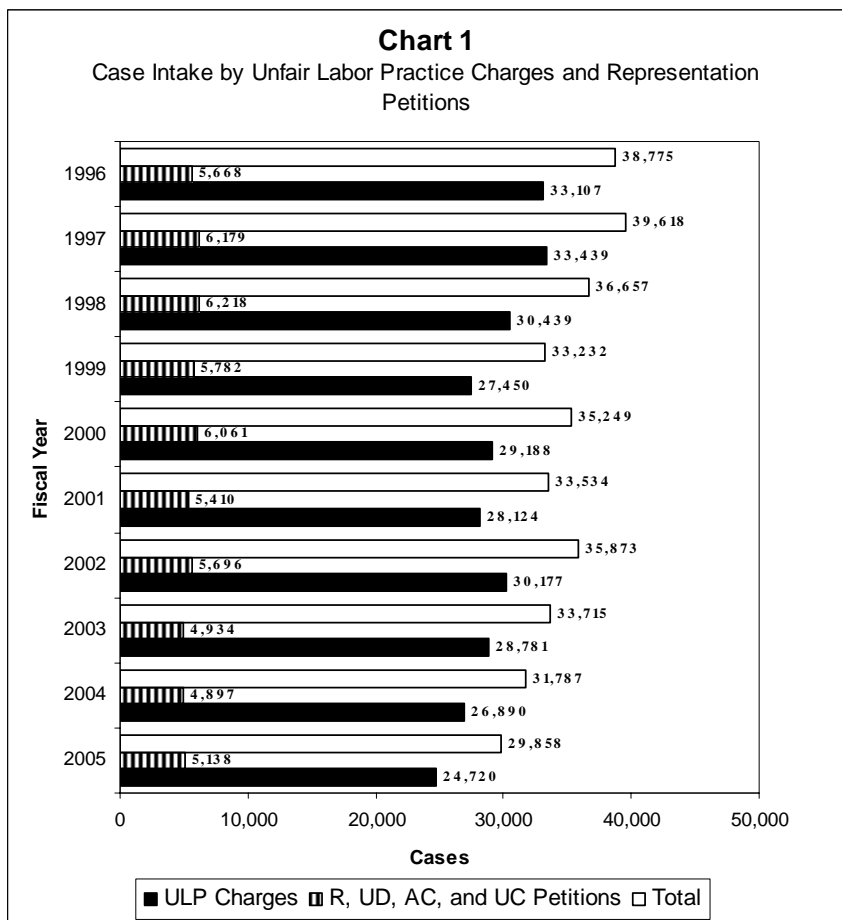
The public filed 24,720 charges alleging that employers or labor organizations committed unfair labor practices prohibited under the statute, adversely affecting employees. During this period the NLRB also received 5138 representation petitions, including 4882 petitions to conduct secret-ballot elections in which workers in appropriate groups select or reject unions to represent them in collective bargaining with their employers as well as 104 petitions for elections in which workers voted on whether to rescind existing union-security agreements. The NLRB also received 8 petitions to amend the certification of existing collective-bargaining representatives and 144 petitions to clarify existing collective-bargaining units.

After the initial influx of charges and petitions, the flow narrows because the great majority of the newly filed cases are resolved in NLRB's national network of field offices by dismissals, withdrawals, agreements, and settlements.

During fiscal year 2005, the five-member Board was composed of Chairman Robert J. Battista and Members Wilma B. Liebman, Peter C. Schaumber, Dennis P. Walsh, and Ronald Meisburg. Arthur F. Rosenfeld served as General Counsel.

Statistical highlights of NLRB's casehandling activities in fiscal 2005 include:

- The NLRB conducted 2649 conclusive representation elections among some 146,822 employee voters, with workers choosing labor unions as their bargaining agents in 56.8 percent of the elections.
- Although the Agency closed 32,002 cases, 16,174 cases were pending in all stages of processing at the end of the fiscal year. The closings included 26,955 cases involving unfair labor practice charges and 4787 cases affecting employee representation and 260 related cases.
- Settlements, avoiding formal litigation while achieving the goal of equitable remedies in unfair labor practice situations, numbered 9722
- The amount of \$84,313,802 in reimbursement to employees illegally discharged or otherwise discriminated against in violation of their organizational rights was obtained by the NLRB from employers and unions. This total was for lost earnings, fees, dues, and fines. The NLRB obtained 2008 offers of job reinstatements, with 1,580 acceptances.
- Acting on the results of professional staff investigations, which produced a reasonable cause to believe unfair labor practices had been committed, Regional Offices of the NLRB issued 1373 complaints, setting the cases for hearing.
- NLRB's corps of administrative law judges issued 287 decisions, of which 17 were noncomplaint election objection cases.



## NLRB Administration

The National Labor Relations Board is an independent Federal agency created in 1935 by Congress to administer the basic law governing relations between labor unions and business enterprises engaged in interstate commerce. This statute, the National Labor Relations Act, came into being at a time when labor disputes could and did threaten the Nation's economy.

Declared constitutional by the Supreme Court in 1937, the Act was substantially amended in 1947, 1959, and 1974, each amendment increasing the scope of the NLRB's regulatory powers.

The purpose of the Nation's primary labor relations law is to serve the public interest by reducing interruptions in commerce caused by industrial strife. It seeks to do this by providing orderly processes for

protecting and implementing the respective rights of employees, employers, and unions in their relations with one another. The overall job of the NLRB is to achieve this goal through administration, interpretation, and enforcement of the Act.

In its statutory assignment, the NLRB has two principal functions: (1) to determine and implement, through secret-ballot elections, the free democratic choice by employees as to whether they wish to be represented by a union in dealing with their employers and, if so, by which union; and (2) to prevent and remedy unlawful acts, called unfair labor practices, by either employers or unions or both.

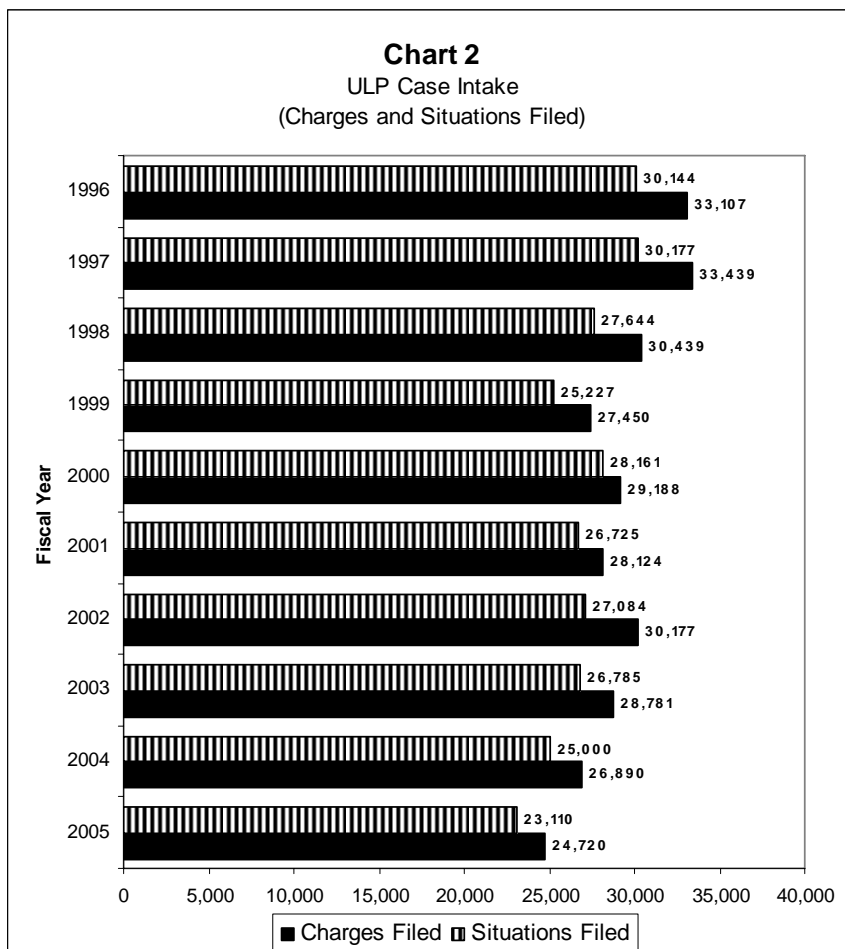
The NLRB does not act on its own motion in either function. It processes only those charges of unfair labor practices and petitions for employee elections which are filed in the NLRB's Regional, Subregional, and Resident Offices, which numbered 51 during fiscal year 2005.

The Act's unfair labor practice provisions place certain restrictions on actions of employers and labor organizations in their relations with employees, as well as with each other. Its election provisions provide mechanics for conducting and certifying results of representation elections to determine collective-bargaining wishes of employees, including balloting to determine whether a union shall continue to have the right to make a union-shop contract with an employer.

In handling unfair labor practices and election petitions, the NLRB is concerned with the adjustment of labor disputes either by way of settlements or through its quasi-judicial proceedings, or by way of secret-ballot employee elections.

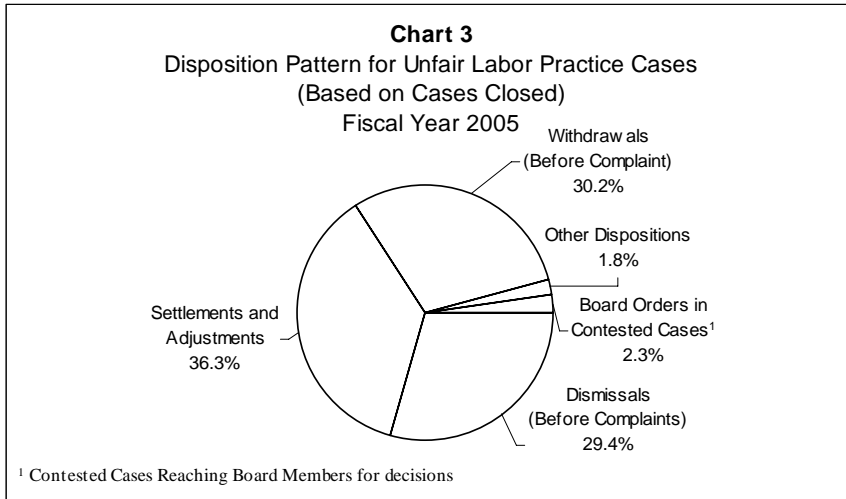
The NLRB has no independent statutory power of enforcement of its decisions and orders. It may, however, seek enforcement in the U.S. courts of appeals, and parties to its cases also may seek judicial review.

NLRB authority is divided by law and by delegation. The five-member Board primarily acts as a quasi-judicial body in deciding cases on formal records. The General Counsel, who, like each Member of the Board, is appointed by the President, is responsible for the issuance and prosecution of formal complaints in cases leading to Board decision, and has general supervision of the NLRB's nationwide network of offices.



For the conduct of its formal hearings in unfair labor practice cases, the NLRB employs administrative law judges who hear and decide cases. Administrative law judges' decisions may be appealed to the Board by the filing of exceptions. If no exceptions are taken, the administrative law judges' orders become orders of the Board.

All cases coming to the NLRB begin their processing in the Regional Offices. Regional Directors, in addition to processing unfair labor practice cases in the initial stages, also have the authority to investigate representation petitions, to determine units of employees appropriate for collective-bargaining purposes, to conduct elections, and to pass on objections to conduct of elections. There are provisions for appeal of representation and election questions to the Board.



## **B. Operational Highlights**

### **1. Unfair Labor Practices**

Charges that business firms, labor organizations, or both have committed unfair labor practices are filed with the National Labor Relations Board at its field offices nationwide by employees, unions, and employers. These cases provide a major segment of the NLRB workload.

Following their filing, charges are investigated by the Regional professional staff to determine whether there is reasonable cause to believe that the Act has been violated. If such cause is not found, the Regional Director dismisses the charge or it is withdrawn by the charging party. If the charge has merit, the Regional Director seeks voluntary settlement or adjustment by the parties to the case to remedy the apparent violation; however, if settlement efforts fail, the case goes to hearing before an NLRB administrative law judge and, lacking settlement at later stages, on to decision by the five-member Board.

In fiscal year 2005, 24,720 unfair labor practice charges were filed with the NLRB, a decrease of 9 percent from the 26,894 filed in fiscal year 2004. In situations in which related charges are counted as a single unit, there was a decrease of 9 percent from the preceding fiscal year. (Chart 2.)

Alleged violations of the Act by employers were filed in 18,304 cases, a decrease of 8 percent from the 19,946 of 2004. Charges against unions decreased 8 percent to 6381 from 6917 in 2004.

There were 41 charges of violation of Section 8(e) of the Act, which bans hot-cargo agreements. (Tables 1A and 2.)

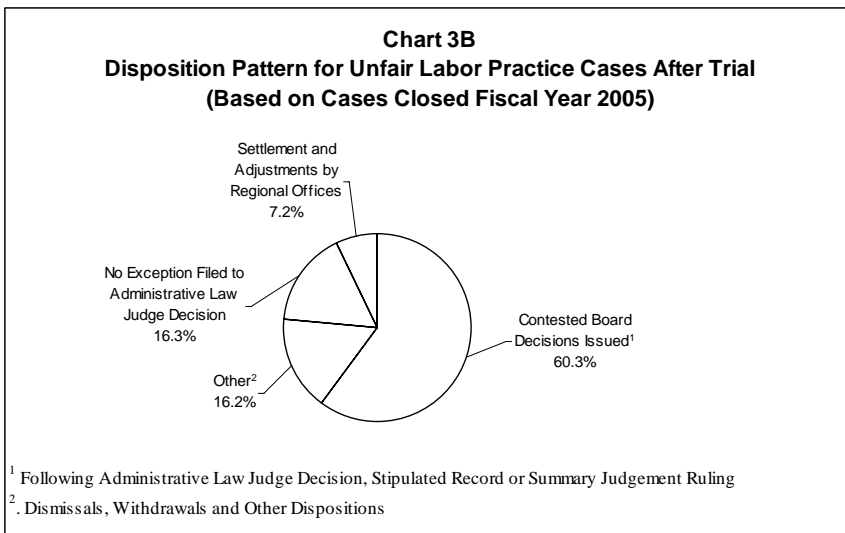
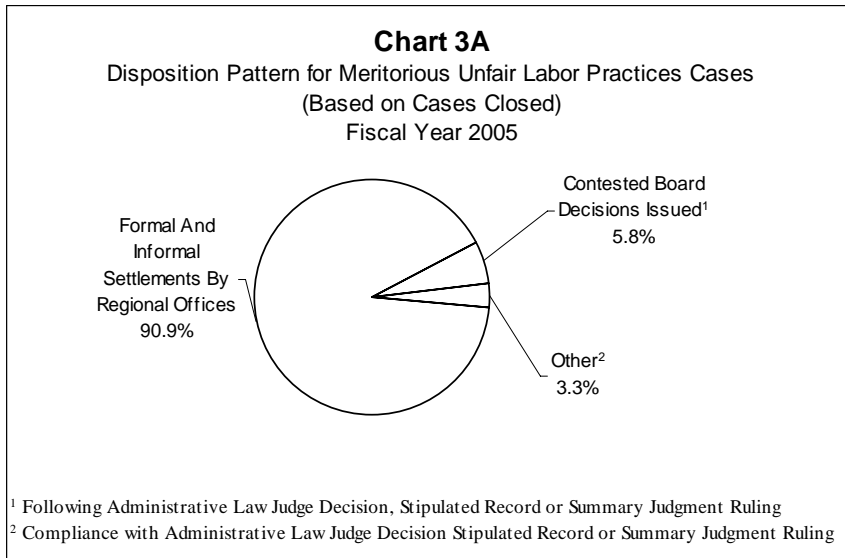
The majority of all charges against employers allege refusal to bargain. There were 8911 such allegations in about 53 percent of the total charges that employers committed violations.

Alleged illegal discharge or other discrimination against employees was the second largest category of allegations against employers, comprising 8047 charges, in about 48 percent of the total charges. (Table 2.)

Of charges against unions, the majority (5405) alleged illegal restraint and coercion of employees, 82 percent. There were 493 charges against unions for illegal secondary boycotts and jurisdictional disputes, a decrease of 19 percent from the 612 of 2004.

There were 594 charges (9 percent) of illegal union discrimination against employees, a decrease of about 2 percent from the 608 of 2004. There were 74 charges that unions picketed illegally for recognition or for organizational purposes, compared with 104 charges in 2004. (Table 2.)

In charges filed against employers, unions led with about 75 percent of the total. Unions filed 13,656 charges and individuals filed 4611.



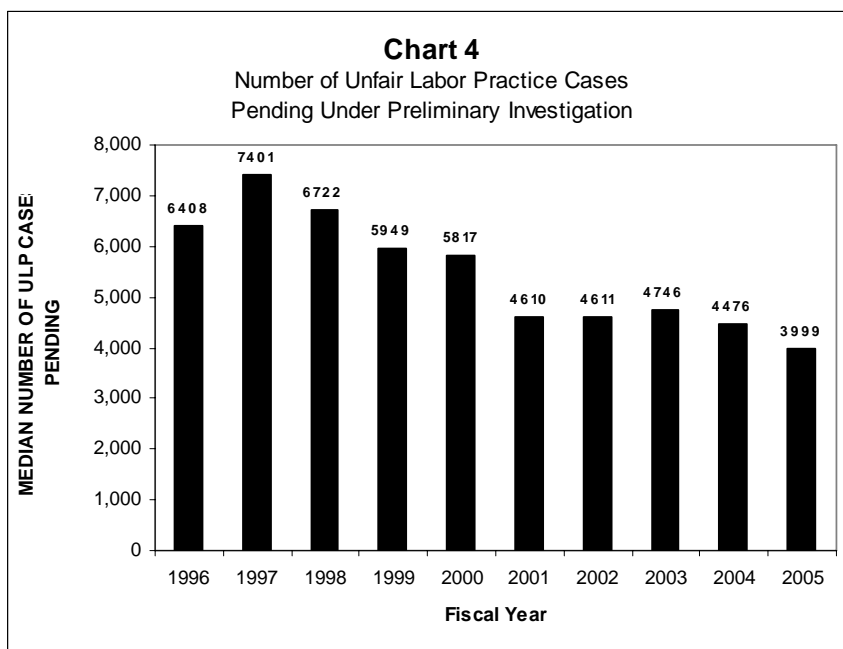
Concerning charges against unions, 5151 were filed by individuals, or about 81 percent of the total of 6379. Employers filed 1123 and other unions filed the 105 remaining charges.

In fiscal year 2005, 26,955 unfair labor practice cases were closed. Some 96 percent were closed by NLRB Regional Offices, about the same as the previous year. During the fiscal year, 36.3 percent of the cases were settled or adjusted before issuance of administrative law judges'

decisions, 30.2 percent were withdrawn before complaint, and 29.4 percent were administratively dismissed.

In evaluation of the Regional workload, the number of unfair labor practice charges found to have merit is important—the higher the merit factor the more litigation required. In fiscal year 2005, 38.5 percent of the unfair labor practice cases were found to have merit.

When the Regional Offices determine that charges alleging unfair labor practices have merit, attempts at voluntary resolution are stressed—to improve labor-management relations and to reduce NLRB litigation and related casehandling. Settlement efforts have been successful to a substantial degree. In fiscal year 2005, precomplaint settlements and adjustments were achieved in 7864 cases, or 30.2 percent of the charges. In 2004, the percentage was 29.0. (Chart 5.)



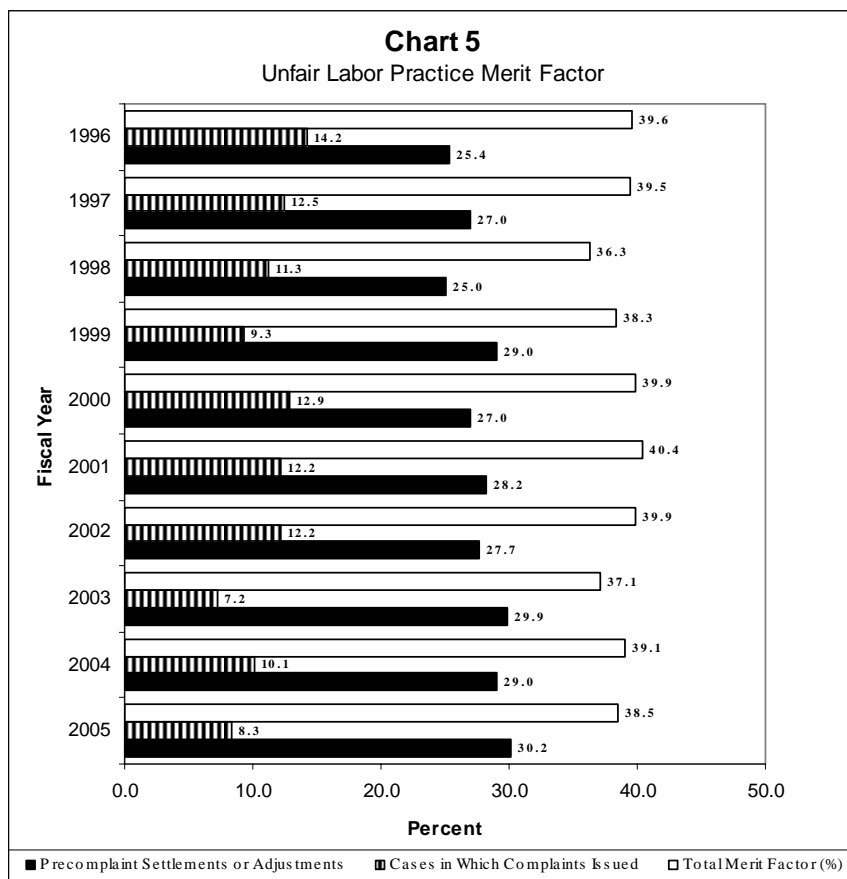
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Cases of merit not settled by the Regional Offices produce formal complaints, issued on behalf of the General Counsel. This action schedules hearings before administrative law judges. During 2005, 1373 complaints were issued, compared with 1840 in the preceding fiscal year. (Chart 6A.)

Of complaints issued, 85.8 percent were against employers and 12.3 percent against unions.

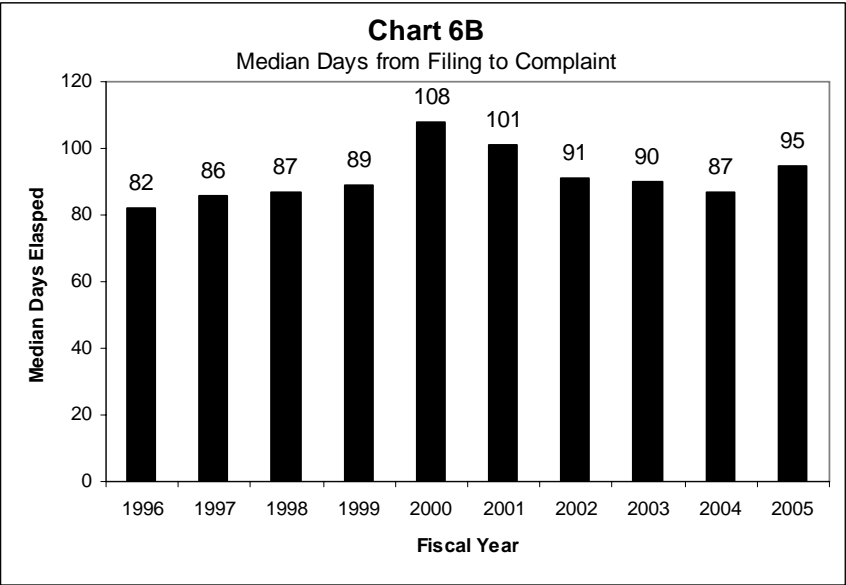
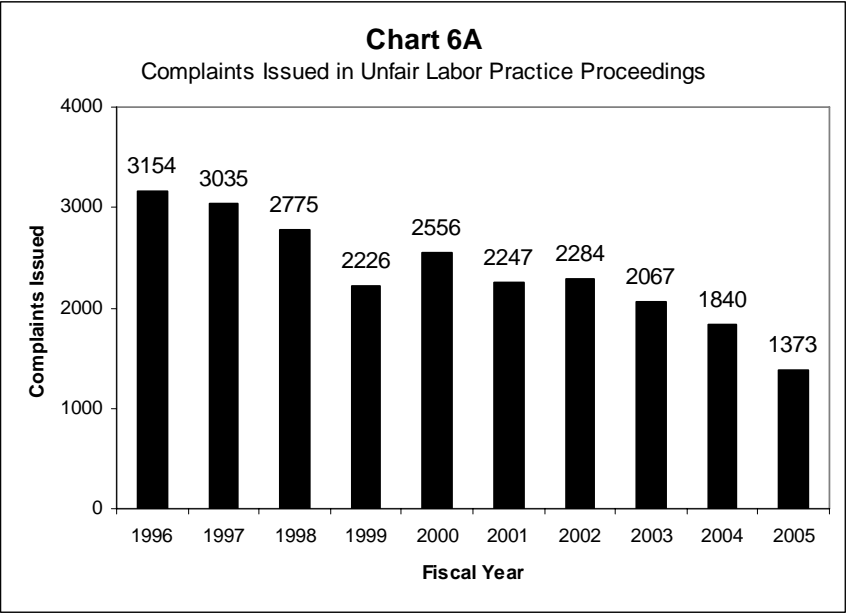
NLRB Regional Offices processed cases from filing of charges to issuance of complaints in a median of 95 days. The 95 days included 15 days in which parties had the opportunity to adjust charges and remedy violations without resorting to formal NLRB processes. (Chart 6B.)

Additional settlements occur before, during, and after hearings before administrative law judges. The judges issued 270 decisions in 668 cases during 2005. They conducted 247 initial hearings, and 22 additional hearings in supplemental matters. (Chart 8 and Table 3A.)



By filing exceptions to judges' findings and recommended rulings, parties may bring unfair labor practice cases to the Board for final NLRB decision.

In fiscal year 2005, the Board issued 348 decisions in unfair labor practice cases contested as to the law or the facts—311 initial decisions, 8 backpay decisions, 8 determinations in jurisdictional work dispute cases, and 21 decisions on supplemental matters. Of the 311 initial decision cases, 287 involved charges filed against employers and 24 had union respondents.



For the year, the NLRB awarded backpay of \$83.8 million. (Chart 9.) Reimbursement for unlawfully exacted fees, dues, and fines added about another \$475,929. Backpay is lost wages caused by unlawful discharge and other discriminatory action detrimental to employees, offset by

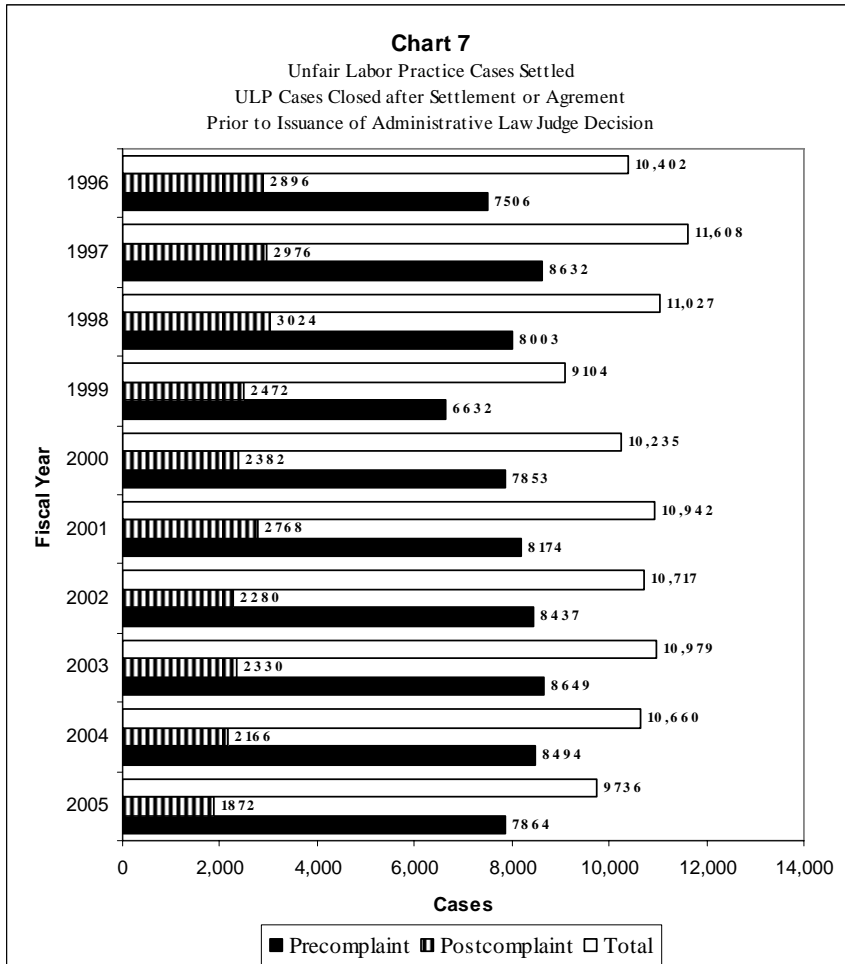
earnings elsewhere after the discrimination. About 2008 employees were offered reinstatement, and 79 percent accepted.

At the end of fiscal 2005, there were 14,558 unfair labor practice cases being processed at all stages by the NLRB, compared to 16,793 cases pending at the beginning of the year.

## **2. Representation Cases**

The NLRB received 5138 representation and related case petitions in fiscal 2005, compared to 4897 such petitions a year earlier.

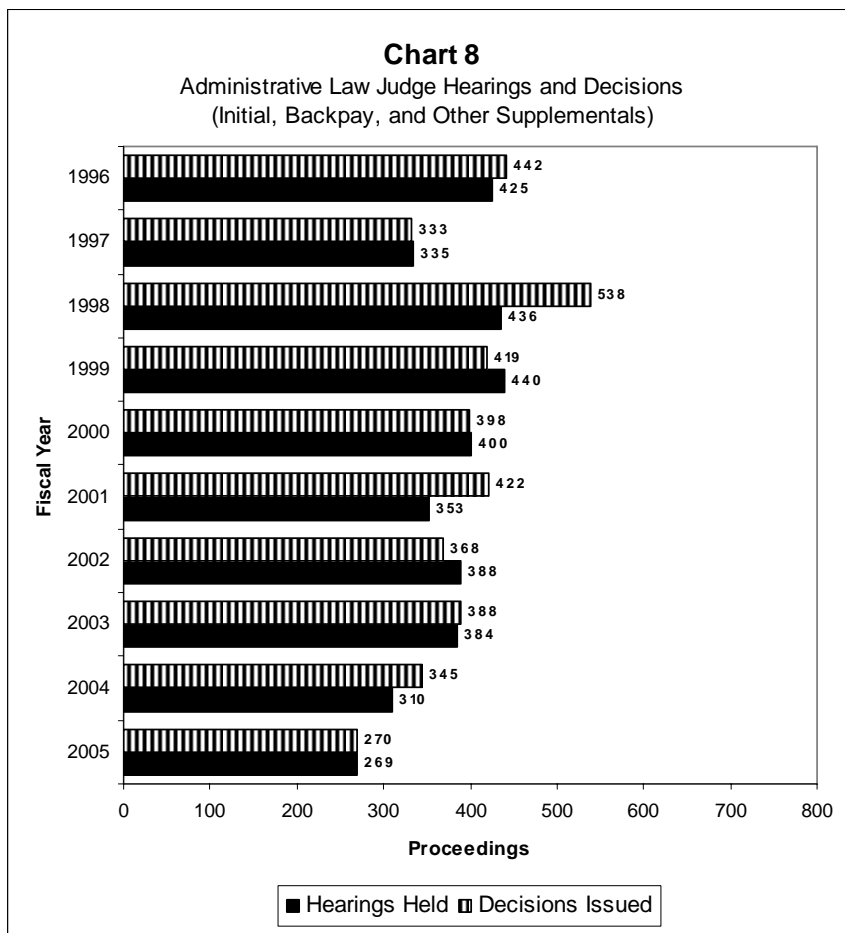
The 2005 total consisted of 4116 petitions that the NLRB conducted secret-ballot elections where workers select or reject unions to represent them in collective bargaining; 766 petitions to decertify existing bargaining agents; 104 deauthorization petitions for referendums on rescinding a union's authority to enter into union-shop contracts; and 144 petitions for unit clarification to determine whether certain classifications of employees should be included in or excluded from existing bargaining units. Additionally, 8 amendment of certification petitions were filed.



During the year, 5047 representation and related cases were closed, compared to 4897 in fiscal 2004. Cases closed included 4012 collective-bargaining election petitions; 775 decertification election petitions; 112 requests for deauthorization polls; and 148 petitions for unit clarification and amendment of certification. (Chart 14 and Tables 1 and 1B.)

The overwhelming majority of elections conducted by the NLRB resulted from some form of agreement by the parties on when, where, and among whom the voting should occur. Such agreements are encouraged by the Agency. In 7.5 percent of representation cases closed by elections, balloting was ordered by NLRB Regional Directors following hearing on points in issue. There were 163 cases where the Board directed an election after transfer of a case from the Regional Office. (Table 10.) There was one case that resulted in expedited

elections pursuant to the Act's 8(b)(7)(C) provisions pertaining to picketing.

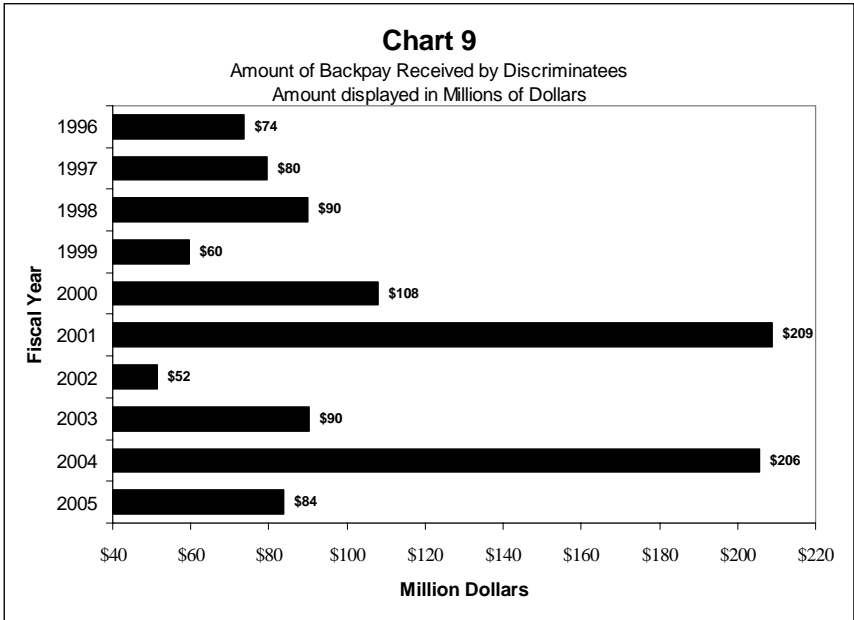


### 3. Elections

The NLRB conducted 2649 conclusive representation elections in cases closed in fiscal 2005, compared to the 2719 such elections a year earlier. Of 176,919 employees eligible to vote, 146,822 cast ballots, virtually 8 of every 10 eligible.

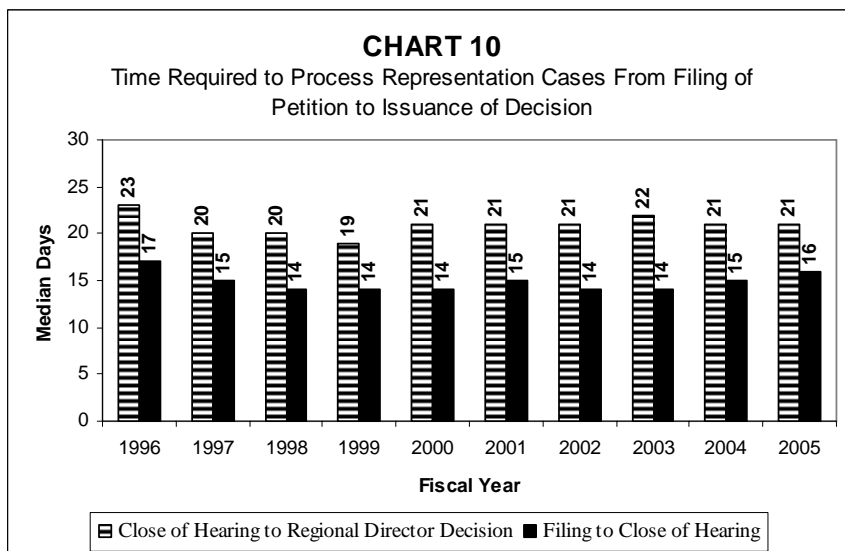
Unions won 1504 representation elections, or 56.8 percent. In winning majority designation, labor organizations earned bargaining rights or continued as employee representatives for 85,383 workers. The employee vote over the course of the year was 77,351 for union representation and 69,471 against.

The representation elections were in two categories—the 2267 collective-bargaining elections in which workers chose or voted down labor organizations as their bargaining agents, plus the 382 decertification elections determining whether incumbent unions would continue to represent employees.



There were 2469 select-or-reject-bargaining-rights (one union on ballot) elections, of which unions won 1344, or 54.4 percent. In these elections, 65,626 workers voted to have unions as their agents, while 67,593 employees voted for no representation. In appropriate bargaining units of employees, the election results provided union agents for 69,306 workers. In NLRB elections the majority decides the representational status for the entire unit.

There were 180 multiunion elections, in which two or more labor organizations were on the ballot, as well as a choice for no representation. Employees voted to continue or to commence representation by one of the unions in 160 elections, or 88.9 percent.

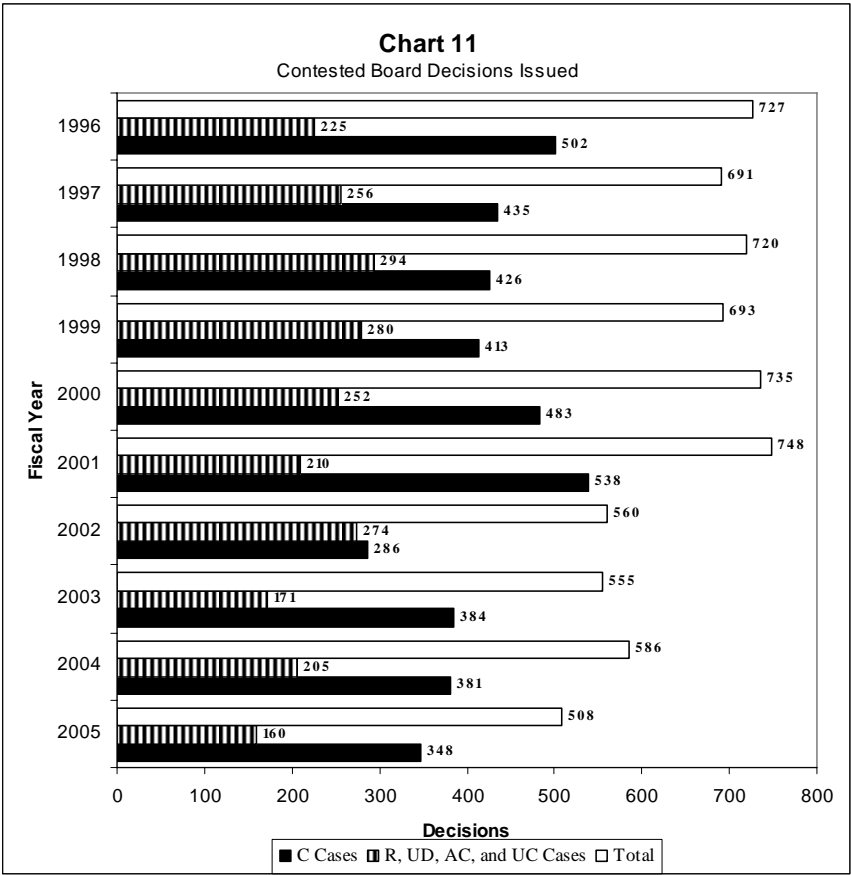


As in previous years, labor organization results brought continued representation by unions in 133 decertification elections, or 34.8 percent, covering 14,873 employees. Unions lost representation rights for 11,593 employees in 249 elections, or 65.2 percent. Unions won in bargaining units averaging 112 employees, and lost in units averaging 47 employees. (Table 13.)

Besides the conclusive elections, there were 133 inconclusive representation elections during fiscal year 2005 which resulted in withdrawal or dismissal of petitions before certification, or required a rerun or runoff election.

In deauthorization polls, labor organizations lost the right to make union-shop agreements in 16 referendums, or 27.1 percent, while they maintained the right in the other 43 polls which covered 4477 employees. (Table 12.)

For all types of elections in 2005, the average number of employees voting, per establishment, was 55, compared to 59 in 2004. About 74 percent of the collective bargaining and decertification elections involved 59 or fewer employees. (Tables 11 and 17.)



**4. Decisions Issued**

**a. The Board**

Dealing effectively with the remaining cases reaching it from nationwide filings after dismissals, settlements, and adjustments in earlier processing stages, the Board handed down 776 decisions concerning allegations of unfair labor practices and questions relating to employee representation. This total compared to the 826 decisions rendered during fiscal year 2004.

A breakdown of Board decisions follows:

Total Board decisions.....	<u>769</u>
Contested decisions .....	<u>508</u>

Unfair labor practice decisions .....	348
Initial (includes those based on	
stipulated record).....	311
Supplemental .....	21
Backpay .....	8
Determinations in jurisdictional	
disputes.....	8
Representation decisions .....	155
After transfer by Regional Directors	
for initial decision	1
After review of Regional Director	
decisions .....	39
On objections and/or challenges ...	115
Other decisions .....	5
Clarification of bargaining unit.....	3
Amendment to certification .....	0
Union-deauthorization .....	2
Noncontested decisions.....	<b><u>261</u></b>
Unfair labor practice .....	137
Representation .....	123
Other .....	1

The majority (70 percent) of Board decisions resulted from cases contested by the parties as to the facts and/or application of the law. (Tables 3A, 3B, and 3C.)

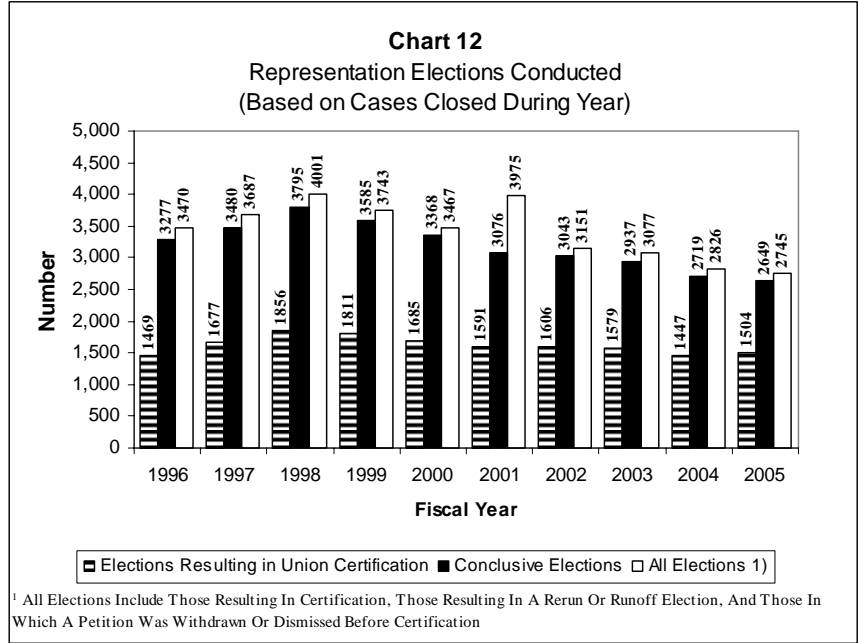
In fiscal 2005, about 5.8 percent of all meritorious charges and 60.3 percent of all cases in which a hearing was conducted reached the Board for decision. (Charts 3A and 3B.) Generally, unfair labor practice cases take about twice the time to process than representation cases.

#### **b. Regional Directors**

NLRB Regional Directors issued 596 decisions in fiscal 2005, compared to 675 in 2004. (Chart 13 and Tables 3B and 3C.)

**c. Administrative Law Judges**

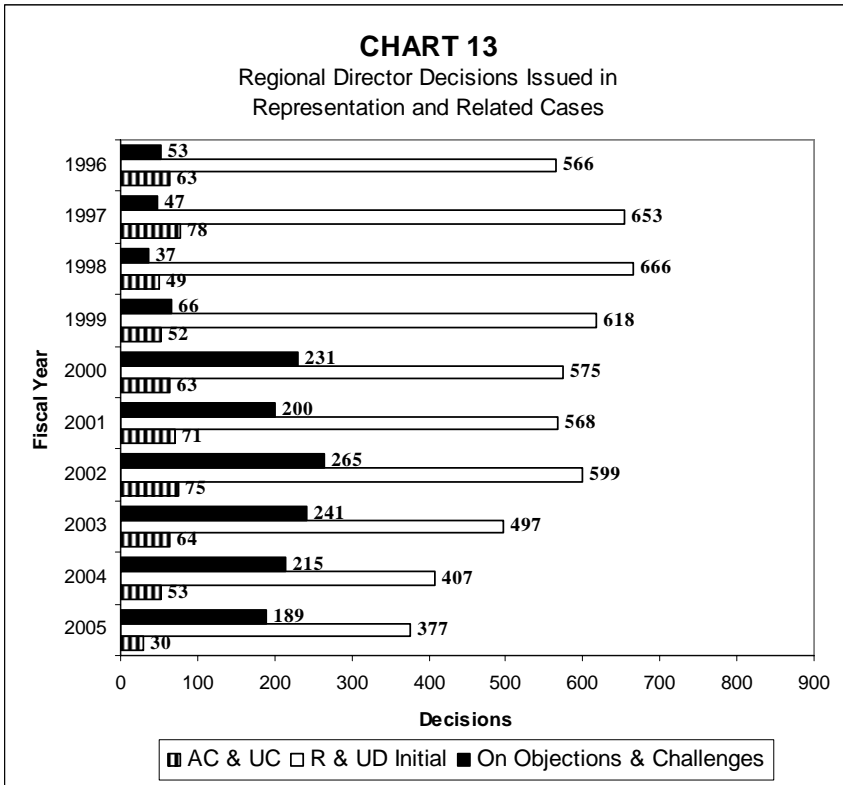
Administrative law judges issued 270 decisions and conducted 269 hearings. (Chart 8 and Table 3A.)



**5. Court Litigation**

**a. Appellate Courts**

In fiscal year 2005, 73 cases involving the NLRB were decided by the United States courts of appeals compared to 62 in fiscal year 2004. Of these, 76.7 percent were won by NLRB in whole or in part compared to 79.0 percent in fiscal year 2004; 1.4 percent were remanded entirely compared to 4.8 percent in fiscal year 2004; and 2.7 percent were entire losses compared to 16.1 percent in fiscal year 2004.



### b. The Supreme Court

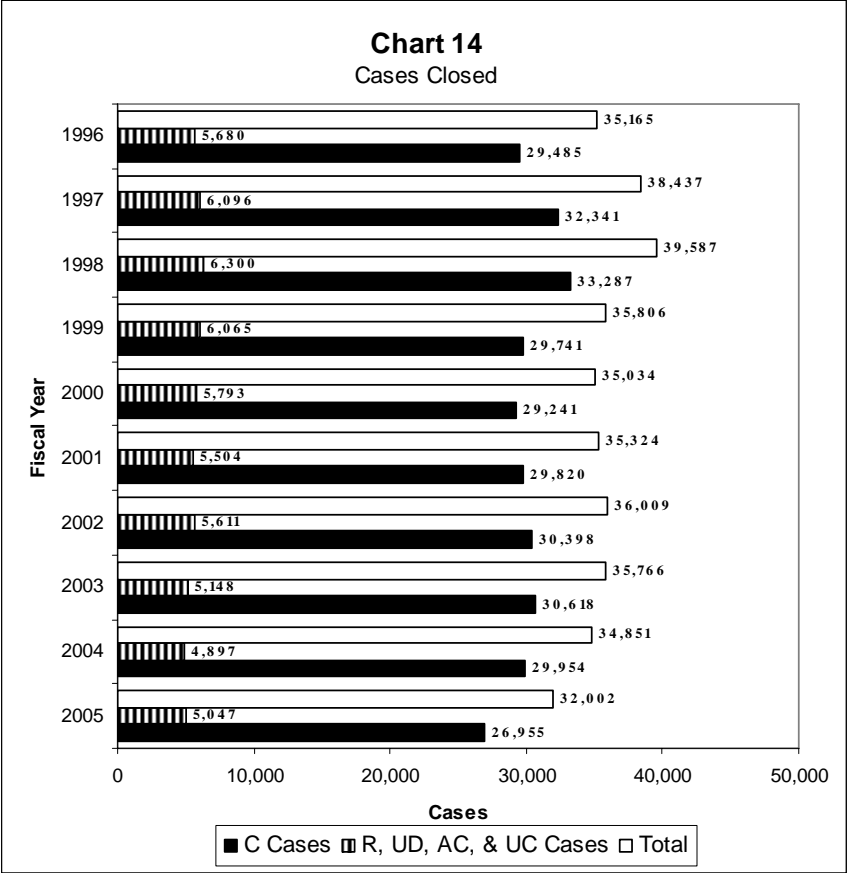
In fiscal 2005, the Supreme Court did not decide any Board cases. The Board did not participate as amicus in any cases in fiscal 2005.

### c. Contempt Actions

In fiscal 2005, 139 cases were formally referred to the Contempt Litigation and Compliance Branch for consideration of contempt or other compliance actions.<sup>1</sup> Fifteen civil contempt or equivalent proceedings were in Federal District Courts or Bankruptcy Courts. Seventeen civil contempt or equivalent adjudications were awarded in favor of the Board during the fiscal year. The Branch also obtained one protective restraining order and 26 other substantive orders in ancillary proceedings. There were nine cases in which the court directed compliance without adjudication; and there were three cases in which the courts either denied

<sup>1</sup> In 216 other cases, advice and/or assistance was solicited and provided to the Regions or other Agency personnel and the cases returned for further administrative processing.

the Board’s petition or the proceedings were discontinued at the CLCB’s request.



**d. Miscellaneous Litigation**

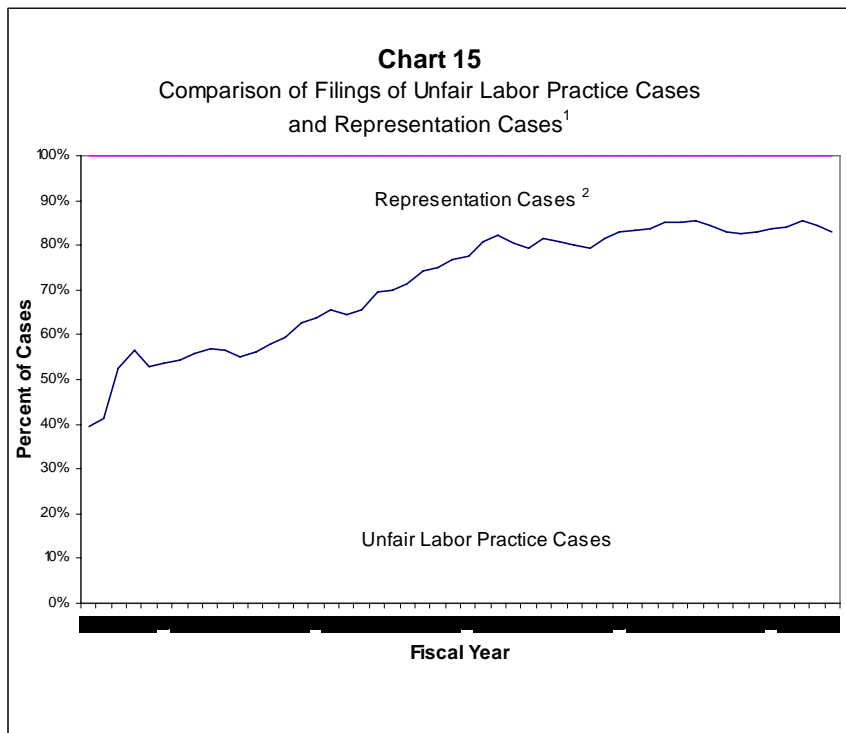
There were 12 additional cases involving miscellaneous litigation decided by appellate, district, and bankruptcy courts. The NLRB’s position was upheld in 10 cases. (Table 21.)

**e. Injunction Activity**

The NLRB sought injunctions pursuant to Sections 10(j) and 10(l) in 13 petitions filed with the U.S. district courts, compared to 17 in fiscal year 2004. (Table 20.) Injunctions were granted in 7, or 78 percent, of the 9 cases litigated to final order.

NLRB injunction activity in district courts in 2005:

Granted.....	7
Denied.....	2
Withdrawn.....	0
Settled or placed on court's inactive lists.....	3
Awaiting action at end of fiscal year.....	2



### C. Decisional Highlights

In the course of the Board's administration of the Act during the report period, it was required to consider and resolve complex problems arising from the great variety of factual patterns in the many cases reaching it. In some cases, new developments in industrial relations, as presented by the factual situation, required the Board's accommodation of established principles to those developments. Chapter II on "NLRB Jurisdiction," Chapter III on "Representation Proceedings," and Chapter IV on "Unfair Labor Proceedings" discuss some of the more significant decisions of the Board during the report period. The following

summarizes briefly some of the decisions establishing or reexamining basic principles in significant areas.

### **1. Employees Jointly Employed by Supplier and User Employers**

In *Oakwood Care Center and N&W Agency, Inc.*,<sup>1</sup> the Board majority returned to longstanding prior precedent<sup>2</sup> and found that combined units of solely and jointly employed employees are multiemployer units and are statutorily permissible only with the parties' consent. In so holding, the majority overruled *M.B. Sturgis*,<sup>3</sup> which held that the Act permitted bargaining units that combine employees who are solely employed by a user employer and employees who are jointly employed by a user employer and a supplier employer.

The majority found that the approach adopted in *Sturgis*, however well-intentioned, was misguided as a matter of both statutory interpretation and sound national labor policy. The majority pointed out that in the units authorized by *Sturgis*, some of the employees are employed by the user employer while others are employed by the joint employers. "Thus, the entity that the two groups of employees look to as their employer is not the same. No amount of legal legerdemain can alter this fact." The majority also stated that national labor policy was better served by limiting *Sturgis*-type units to cases where all parties consent. Allowing such units without the parties' consent, the majority observed, opens the door to significant conflicts among the various employers and groups of employees participating in the collective-bargaining process. Indeed, the multiple employers are placed in the position of negotiating with one another as well as with the union. These are precisely the types of conflicts that Section 9(b) and the Board's community-of-interest test are designed to avoid.

Members Liebman and Walsh, dissenting, cited the rise of alternative work arrangements in response to global economic pressures on employers and argued that workers in these arrangements would now effectively be barred from organizing, unless their employers consented. Rejecting the majority's "supposed strict construction" of the statute, the dissent pointed to the Board's "disturbing reluctance to recognize changes in the economy and the workplace and to ensure that our law reflects economic realities and continues to further the goals that Congress has set." According to the dissent, neither the language of the statute, nor its legislative history foreclosed a *Sturgis* unit given the Board's broad discretion to determine an appropriate bargaining unit.

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<sup>1</sup> 343 NLRB No. 76 (Chairman Battista and Members Schaumber and Meisburg; Members Liebman and Walsh dissenting).

<sup>2</sup> See *Greenhoot, Inc.*, 205 NLRB 250 (1973) and *Lee Hospital*, 300 NLRB 947 (1990).

<sup>3</sup> 331 NLRB 1298 (2000).

Repeatedly citing to the Board's statutory duty "to assure to employees the fullest freedom" in exercising their rights, the dissent observed that *Sturgis* units facilitate collective bargaining and they pointed to the lack of empirical support for the majority's contrary view. The dissent characterized the majority's decision as "at worst accelerating the expansion of a permanent underclass of workers" and predicted that it would "hasten the obsolescence" of the statute.

## 2. Prounion Campaign Conduct of Supervisors

In *Harborside Healthcare, Inc.*,<sup>4</sup> the Board, in a 3–2 decision, reaffirmed longstanding Board precedent that prounion supervisory conduct may be grounds for setting aside an election without there being an explicit threat of reprisal or promise of benefit. Pursuant to the United States Court of Appeals for the Sixth Circuit's remand in *Harborside Healthcare, Inc. v. NLRB*,<sup>5</sup> the Board majority disavowed language in prior Board decisions that required a prounion supervisor to make an express threat or promise to an employee in order to find the prounion supervisory conduct objectionable.<sup>6</sup>

The majority stated that the Board looks to two factors when determining whether supervisory prounion conduct has upset the requisite laboratory conditions for a fair election. The first factor is whether the supervisor's prounion conduct reasonably tended to coerce or interfere with the employees' free choice in the election. This inquiry includes consideration of the nature and degree of supervisory authority possessed by those who engage in the prounion conduct and an examination of the nature, extent, and context of the conduct in question. The second factor is whether the conduct interfered with freedom of choice to the extent that it materially affected the outcome of the election, based on factors such as the margin of victory in the election; whether the conduct at issue was widespread or isolated; the timing of the conduct; the extent to which the conduct became known; and the lingering effect of the conduct. In assessing the effect on the conduct of the election, the majority stated that it would consider, among other things, whether the employer opposed the union's campaign, including any antiunion statements by higher-level officials and whether the employer disavowed the coercive prounion supervisory conduct.

Emphasizing that it is incumbent on the Board to protect employees from the conduct of supervisors, whether prounion or antiunion, that

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<sup>4</sup> 343 NLRB No. 100 (Chairman Battista and Members Schaumber and Meisburg; Members Liebman and Walsh dissenting).

<sup>5</sup> 230 F.3d 206 (6th Cir. 2000).

<sup>6</sup> See *Pacific Micronesia Corp.*, 326 NLRB 458 (1998); *Sutter Roseville Medical Center*, 324 NLRB 218 (1997); and *Pacific Physician Services*, 313 NLRB 1176 (1994)..

interferes with employees' freedom of choice, the Board overruled *Millsboro Nursing*,<sup>7</sup> which held that supervisory solicitation of union authorization cards is not objectionable unless it "contains the seeds of potential reprisal, punishment or intimidation." Instead, the majority held such solicitations are inherently coercive absent mitigating circumstances. The majority reasoned that a supervisor, by definition, has the power to affect the working life of employees, and the solicitation of cards affords the supervisor the opportunity to obtain a graphic illustration of who is prounion and, by the process of eliminating non-signers, who likely is not. Employees solicited by a supervisor would reasonably be concerned that the "right" response will be viewed with favor, and a "wrong" response with disfavor. When a supervisor solicits employees outside the critical period, the effects of the coercion may continue to be felt during that period. The Board majority stated it will consider such prepetition conduct notwithstanding *Ideal Electric Mfg.*, 134 NLRB 1275 (1961) (holding that, in representation cases where a preelection hearing was conducted, the Board will generally not set aside the election based on prepetition conduct).

Members Liebman and Walsh, dissenting, criticized the majority for reaching far beyond the issue raised by the Sixth Circuit's remand—whether an actual threat or promise of benefit is required to find objectionable conduct. In their view, the majority abandoned well-established precedent and offered a "restatement of the law" governing supervisors' prounion conduct not sought by the court or the parties. The dissent found that the majority adopted a "new legal test" that "minimizes the importance of a key factor: the employer's antiunion stance, which the Board has long recognized as limiting the impact of a prounion supervisor's conduct" and that radically breaks with current Board law, which has focused on the potential for coercion in supervisory conduct. The dissent warned that the majority's ruling that supervisory card solicitation is inherently coercive "jeopardizes the outcome of many elections" because such solicitation tends to be by borderline supervisors, who may be unaware of their supervisory status until their conduct is challenged.

### **3. No Presumption of Dissemination of Threats of Plant Closure**

In *Crown Bolt, Inc.*,<sup>8</sup> the Board in a 3–2 decision held that an employer's threat to close its facility in the event employees vote for union representation will not be presumed disseminated throughout the

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<sup>7</sup> 327 NLRB 879 (1999).

<sup>8</sup> 343 NLRB No. 86 (Chairman Battista and Members Schaumber and Meisburg; Members Liebman and Walsh dissenting in part).

bargaining unit. This holding is prospective only and in all pending cases involving threats of plant closure, the Board stated that it will continue to rebuttably presume that such threats were widely disseminated.

The Board majority overruled the Board's decision in *Springs Industries, Inc.*,<sup>9</sup> which held that plant-closure threats are presumed disseminated throughout the plant absent evidence to the contrary. *Springs Industries*, in turn, overruled *Kokomo Tube Co.*,<sup>10</sup> where the Board declined to presume dissemination of a threat of plant closure made to one employee. The majority concluded that *Kokomo Tube* "represents the better evidentiary rule in requiring the party that seeks to rely on dissemination throughout the plant to show it."

The majority relied on several considerations in overruling *Springs Industries*. First, because the burden of proof in election-objection cases rests with the objecting party, *Springs Industries* "runs counter to the burden-allocation norm." Second, while the holding of *Springs Industries* is limited to plant-closure threats, its rationale is not, so "there is no apparent basis for declining to extend [the dissemination presumption] to other kinds" of statements. Third, the presumption is unnecessary: if dissemination of plant-closure threats is "all but inevitable," as the Board stated in *Springs Industries*, direct proof of that fact should be easy. Fourth, employers face an undue burden in proving a lack of dissemination. Finally, circumstantial variations affect the probability of dissemination in any particular case, arguing against the presumption in all plant-closure threat cases.

In their partial dissent, Members Liebman and Walsh characterized *Kokomo Tube* as an aberration from the Board's "traditional practice" of presuming dissemination of plant-closure threats. Emphasizing the severity of such threats, the dissent rejected the majority's view that a variety of circumstances sufficiently diminish the likelihood of dissemination to make proof of dissemination the better rule. The dissent disagreed that dissemination should be easy for the objecting union to prove, stating that "employees are often reluctant, even afraid, to testify against their employer." Correspondingly, the dissent suggested that the majority had exaggerated the difficulties faced by employers in rebutting the dissemination presumption. The dissent also defended the *Springs Industries* presumption on the ground of administrative efficiency. Finally, the dissent noted the consistency of the *Springs Industries* presumption with the analogous "lore of the shop" principle, under which the Board assumes that plant-closure threats and other serious

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<sup>9</sup> 332 NLRB 40 (2000).

<sup>10</sup> 280 NLRB 357 (1986).

unfair labor practices will live on in the lore of the shop by being disseminated to new employees months and even years after the event.

#### **4. Independent Contractor Status of Newspaper Carriers**

In *St. Joseph News-Press*,<sup>11</sup> the Board majority found that the respondent's newspaper carriers and haulers are not employees under Section 2(3) of the Act, but are independent contractors excluded from the Act's protection under *Roadway Package Systems*<sup>12</sup> and *Dial-A-Mattress Operating Corp.*<sup>13</sup>

The majority found that a comparison of the common law factors in this case with those factors in *Roadway* and *Dial-A-Mattress* demonstrated, on balance, that the carriers are independent contractors. The majority noted the following factors in finding that the carriers are independent contractors: the carriers provide their own "tools" of work, i.e., their vehicles; they receive little training from the respondent; they are not supervised by the respondent while performing the work; they have the ability to impact their own compensation; they may hire their own employees; they may work for more than one party; they can solicit new business; they can subcontract their routes to others; they are free to change the delivery order, to disregard delivery requests without fear of discipline, and to refuse to deliver to those they deem unlikely to pay or to whom it would not be economically feasible; they sign contracts stating they are independent contractors; the respondent does not withhold income taxes from their pay; and they do not wear company uniforms or insignia. The majority also found other factors weigh in favor of employee status, e.g., the carriers' work is an integral part of the respondent's business, the carriers' work is not particularly skilled, the long-term nature of the relationship between the carriers and the respondent, and how other workers compare to the carriers.

Addressing the argument that the carriers should be found to be employees because of their asserted lack of bargaining power, the majority explained that the status of persons as employees and independent contractors does not turn on differences in their relative bargaining power. According to the majority, the common law of agency, as applied by the Board, does involve an analysis of the business relationship; consequently some of the factors considered are obviously "economic" in nature. But it does not, and under the current state of law, cannot, follow that the Board must import economic dependence or

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<sup>11</sup> 345 NLRB No. 31 (Chairman Battista and Member Schaumber; Member Liebman dissenting).

<sup>12</sup> 326 NLRB 842 (1998).

<sup>13</sup> 326 NLRB 884 (1998).

differences in economic strength as factors in applying the common law of agency.

Member Liebman, dissenting, found that the respondent's substantial economic advantage over the carriers results in a relationship of economic dependence and is persuasive evidence that the carriers are employees, who are substantially dependent on the respondent for their livelihood, not independent contractors who are economically independent business people. Explaining that similar contractor-like relationships have become prevalent in more and more workplaces as companies increasingly seek flexibility in a more competitive economic climate, she concluded that the majority chose to apply a rigid, outdated version of the common law agency test, one which ignores relevant economic factors and contradicts the true spirit of the common law: flexibility and growth to match a society in constant development.

### **5. Section 8(d) Contract Modification**

In *Bath Iron Works Corp.*,<sup>14</sup> the Board majority held that the respondent did not violate Section 8(a)(1) and (5) and 8(d) by merging its Bath Iron Works Pension Plan (the Plan) into the larger pension plan of its corporate parent, General Dynamics, without the consent of the three Charging Party unions. The judge found that the merger was a mandatory subject of bargaining, that the respondent modified the collective-bargaining agreements without the unions' consent, that the unions had not "clearly and unmistakably" waived their statutory right to bargain over the merger, and thus, the merger of the plans was unlawful.

The majority concluded that, under a reasonable interpretation of the collective-bargaining agreements and the Plan documents, the respondent had the authority to implement the merger without the unions' consent. The Board majority held that the "clear and unmistakable waiver" standard was not the correct standard for cases alleging 8(d) contract modification, where the remedy would require adherence to the contract for its term, but was appropriate only in cases alleging an unlawful unilateral change, where the remedy was less severe, i.e., restoration and bargaining to impasse. In cases where the General Counsel was alleging a contract modification, the majority concluded that the issue was whether the employer had a "sound arguable basis" for its interpretation of the contract, such that the change arguably was not a modification of the contract. See *NCR Corp.*, 271 NLRB 1212, 1213 (1984) and other similar cases. Having found that "clear and unmistakable waiver" was not applicable in the 8(d) context, the majority found it unnecessary to

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<sup>14</sup> 345 NLRB No. 33 (Chairman Battista and Members Schaumber; Member Liebman dissenting).

pass on that standard's continued validity in light of several circuit courts' preference for a "contract coverage" standard.

Applying a "sound arguable basis" standard, the majority found that the respondent had demonstrated that the Plan documents were incorporated into the collective-bargaining agreements and that those documents arguably gave the respondent the authority to implement the merger without the unions' consent. The General Counsel's argument that the Plan documents were not part of the collective-bargaining agreements and did not contain a right to merge the Plan was "reasonable," but no more so than the respondent's interpretation of the agreements and Plan documents. Accordingly, the General Counsel failed to prove that the respondent had modified the agreements.

Member Liebman, dissenting, contended that the majority erred in rejecting the traditional "clear and unmistakable waiver" approach, arguing that such an approach had been used by the Board in very similar cases and was appropriate whenever an employer relied on a contractual privilege in defending unilateral conduct. She found that none of the collective-bargaining agreements contained any language that, by its express terms, authorized the respondent to act unilaterally with respect to the Plan during the life of the agreements, much less to merge it out of existence. She further contended that, even under a "sound arguable basis" standard, the General Counsel had adequately demonstrated a violation since the Plan documents expressly made any modifications "subject to the applicable provisions of any collective-bargaining agreement" and the collective-bargaining agreements provided for the particular plan in effect at that time and contained no language authorizing unilateral changes.

#### **D. Financial Statement**

The obligations and expenditures of the National Labor Relations Board for the fiscal year ended September 30, 2005, are as follows:

Personnel compensation	\$158,232,665
Personnel benefits	35,995,666
Benefits for former personnel	557,000
Travel and transportation of persons	2,707,879
Transportation of things	258,468
Rent, communications, and utilities	32,273,642
Printing and reproduction	243,594
Other services	16,137,027

Supplies and materials	1,159,392
Equipment	1,793,044
Insurance claims and indemnities	158,822
Total obligations	249,517,199



## II

### NLRB Jurisdiction

The Board's jurisdiction under the Act, regarding both representation proceedings and unfair labor practices, extends to all enterprises whose operations "affect" interstate or foreign commerce.<sup>1</sup> However, Congress and the courts<sup>2</sup> have recognized the Board's discretion to limit the exercise of its broad statutory jurisdiction to enterprises whose effect on commerce is, in the Board's opinion, substantial—such discretion being subject only to the statutory limitation<sup>3</sup> that jurisdiction may not be declined when it would have been asserted under the Board's self-imposed jurisdictional standards prevailing on August 1, 1959.<sup>4</sup> Accordingly, before the Board takes cognizance of a case, it must first be established that it had legal or statutory jurisdiction, i.e., that the business operations involved "affect" commerce within the meaning of the Act. It must also appear that the business operations meet the Board's applicable jurisdictional standards.<sup>5</sup>

#### **College Affiliated with Church: Employer's Religious Freedom Restoration Act (RFRA) Claim**

In *Carroll College, Inc.*,<sup>6</sup> the Board considered whether the Employer, a private liberal arts college "affiliated" with the Presbyterian

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<sup>1</sup> See Secs. 9(c) and 10(a) of the Act and also the definitions of "commerce" and "affecting commerce" set forth in Sec. 2(6) and (7), respectively. Under Sec. 2(2) the term "employer" does not include the United States or any wholly owned Government corporation, any Federal Reserve Bank, any State or political subdivision, any person subject to the Railway Labor Act, or any labor organization other than when acting as an employer. The exclusion of nonprofit hospitals from the definition of employer was deleted by the health care amendments to the Act (Pub. L. 93-360, 88 Stat. 395, effective Aug. 25, 1974). Nonprofit hospitals, as well as convalescent hospitals, health maintenance organizations, health clinics, nursing homes, extended care facilities, and other institutions "devoted to the care of sick, infirm, or aged person[s]," are now included in the definition of "health care institutions" under the new Sec. 2(14) of the Act. "Agricultural laborers" and others excluded from the term "employee" as defined by Sec. 2(3) of the Act are discussed, inter alia, at 29 NLRB Ann. Rep. 52-55 (1964), and 31 NLRB Ann. Rep. 36 (1966).

<sup>2</sup> See 25 NLRB Ann. Rep. 18 (1960).

<sup>3</sup> See Sec. 14(c)(1) of the Act.

<sup>4</sup> These self-imposed standards are primarily expressed in terms of the gross dollar volume of business in question: 23 NLRB Ann. Rep. 18 (1958). See also *Floridan Hotel of Tampa*, 124 NLRB 261 (1959), for hotel and motel standards.

<sup>5</sup> Although a mere showing that the Board's gross dollar volume standards are met is ordinarily insufficient to establish legal or statutory jurisdiction, no further proof of legal or statutory jurisdiction is necessary when it is shown that the Board's "outflow-inflow" standards are met. 25 NLRB Ann. Rep. 19-20 (1960). But see *Sioux Valley Empire Electric Assn.*, 122 NLRB 92 (1958), concerning the treatment of local public utilities.

<sup>6</sup> 345 NLRB No. 17 (Chairman Battista and Members Liebman and Schaumber).

Church that expressly concedes that it is an employer within the meaning of Section 2(2) of the Act, is nevertheless exempt from application of the Act by virtue of the Religious Freedom Restoration Act (RFRA).

After independently considering the Employer's RFRA claim, the Board found that the Employer has not shown that application of the Act will substantially burden its ability to freely exercise its sincere religious beliefs in any way. Accordingly, it affirmed the Acting Regional Director's decision and direction of election and remanded the proceeding to the Regional Director for further appropriate action.

The UAW was seeking to represent a unit of all full-time and regular part-time tenured and non-tenured teaching faculty employed by the College. Applying *University of Great Falls*,<sup>7</sup> where the Board stated that RFRA does not require the Board to alter the analysis that it has consistently undertaken under *NLRB v. Catholic Bishop of Chicago*,<sup>8</sup> in determining whether the assertion of jurisdiction over an employer would involve a significant infringement of First Amendment rights, the Acting Regional Director found that asserting jurisdiction over the Employer would not violate the First Amendment. He found it unnecessary to address the Employer's RFRA claim. The Board in May 2005 granted the Employer's request for review of the Acting Regional Director's decision solely with respect to his application of the RFRA.

The Board wrote in announcing its revised approach: "We accept the D.C. Circuit's analysis that a ruling that an entity is not exempt from Board jurisdiction under *Catholic Bishop* does not automatically foreclose a RFRA claim that requiring that entity to engage in collective bargaining would 'substantially burden' its exercise of religion. Accordingly, we disavow the Board's decision in *University of Great Falls* to the extent that it can be read to conflate the analysis of a RFRA claim with analysis of a *Catholic Bishop* jurisdictional exemption claim. If a party brings a RFRA claim before the Board, we will analyze it independently of any *Catholic Bishop* exemption claim."

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<sup>7</sup> 331 NLRB 1663 (2000), enfd. denied 278 F.3d 1335 (D.C. Cir. 2002).

<sup>8</sup> 440 U.S. 490 (1979).

# III

## Representation Proceedings

The Act requires that an employer bargain with the representative designated by a majority of its employees in a unit appropriate for collective bargaining. But it does not require that the representative be designated by any particular procedure as long as the representative is clearly the choice of a majority of the employees. As one method for employees to select a majority representative, the Act authorizes the Board to conduct representation elections. The Board may conduct such an election after a petition has been filed by or on behalf of a group of employees or by an employer confronted with a claim for recognition from an individual or a labor organization.

Incident to its authority to conduct elections, the Board has the power to determine the unit of employees appropriate for collective bargaining and to formally certify a collective-bargaining representative on the basis of the results of the election. Once certified by the Board, the bargaining agent is the exclusive representative of all employees in the appropriate unit for collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

The Act also empowers the Board to conduct elections to decertify incumbent bargaining agents that have been previously certified or that are being currently recognized by the employer. Decertification petitions may be filed by employees, by individuals other than management representatives, or by labor organizations acting on behalf of employees.

This chapter concerns some of the Board's decisions during the past fiscal year in which the general rules governing the determination of bargaining representative were adapted to novel situations or reexamined in the light of changed circumstances.

### A. Appropriate Unit Issues

#### 1. Employees Jointly Employed by Supplier and User Employers

In *Oakwood Care Center and N&W Agency, Inc.*,<sup>1</sup> the Board majority returned to longstanding Board precedent and held that employees obtained from a labor supplier cannot be included in a unit of permanent employees of the employer to which they are assigned unless all parties consent to the bargaining arrangement.

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<sup>1</sup> 343 NLRB No. 76 (Chairman Battista and Members Schaumber and Meisburg; Members Liebman and Walsh dissenting).

The majority found that such units, combining jointly-employed supplied employees and permanent employees solely employed by the user employer, are multiemployer units. Under Section 9(b) of the Act, consent is required for the establishment of such multiemployer units.

The decision overruled the Board's decision in *M.B. Sturgis*,<sup>2</sup> which held that bargaining units that combine employees who are solely employed by a user employer and employees who are jointly employed by the user employer and a supplier employer are permissible under the Act. *Sturgis* had overruled established precedent finding such units to be impermissible, absent consent. See *Lee Hospital*.<sup>3</sup>

The majority in *Oakwood* stated:

By ignoring the bright line between employer and multiemployer units, *Sturgis* departed from the statutory directive of Section 9(b) as well as decades of Board precedent. We find that the new approach adopted in *Sturgis*, however well-intentioned, was misguided both as a matter of statutory interpretation and sound national labor policy.

The majority pointed out that in the units authorized by *Sturgis*, some of the employees are employed by the user employer while others are employed by the joint employer. "Thus, the entity that the two groups of employees look to as their employer is not the same. No amount of legal legerdemain can alter this fact."

The majority also stated that national labor policy was better served by limiting *Sturgis*-type units to cases where all parties consent. Allowing such units without consent opens the door to significant conflicts among the various employers and groups of employees participating in the collective bargaining process. The multiple employers are placed in the position of negotiating with one another as well as with the union. These are precisely the types of conflicts that Section 9(b) and the Board's community of interest tests are designed to avoid.

In dissent, Members Liebman and Walsh cited the rise of alternative work arrangements in response to global economic pressures on employers. They argued that workers in these arrangements would now effectively be barred from organizing labor unions, unless their employers consented. Rejecting the majority's "supposed strict construction" of the statute, the dissent pointed to the Board's "disturbing reluctance to recognize changes in the economy and the

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<sup>2</sup> 331 NLRB 1298 (2000).

<sup>3</sup> 300 NLRB 947 (1990).

workplace and to ensure that our law reflects economic realities and continues to further the goals that Congress has set.”

The dissenters described *Lee Hospital* as “a 10-year-old decision, missing any rationale, which itself broke with precedent.” The dissenters argued that neither the language of the statute, nor its legislative history foreclosed a *Sturgis* unit. Rather, the Board has broad discretion to determine an appropriate bargaining unit. The dissent repeatedly cited the Board’s statutory duty “to assure to employees the fullest freedom in exercising their rights.” *Sturgis* units facilitate collective bargaining, the dissenters observed, and pointed to the lack of empirical support for the majority’s contrary view. They characterized the majority’s decision as “at worst accelerating the expansion of a permanent underclass of workers” and predicted that it would “hasten the obsolescence of this statute.”

## 2. Managerial Status of Faculty at a College

The Board in *LeMoyne-Owen College*,<sup>4</sup> following a remand from the U.S. Court of Appeals for District of Columbia Circuit, considered whether the faculty at LeMoyne-Owen College are managerial employees under *NLRB v. Yeshiva University*<sup>5</sup> and subsequent Board precedent applying *Yeshiva*. Chairman Battista and Member Schaumber concluded that the faculty members are managerial employees and excluded from coverage under the Act. Member Liebman dissented.

In an earlier decision,<sup>6</sup> the Board found that the College violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize the employees’ certified representative and ordered the College to recognize and bargain with the Union (Faculty Organization, Lemoyne-Owen College).

After consideration of the record and the position statements filed by the parties, Chairman Battista and Member Schaumber determined that the faculty exercise substantial authority in a majority of critical areas identified in *Yeshiva* and subsequent cases applying it; that the faculty play a major and effective role in the formulation and effectuation of management policies at LeMoyne-Owen College; and therefore, faculty members are managerial employees and excluded from coverage under the Act. Accordingly, the majority dismissed the complaint in Case 26–CA–30592; reopened Case 25–RC–10120; vacated the Union’s certification in Case 25–RC–1020 issued on September 17, 2002, and dismissed the petition.

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<sup>4</sup> 345 NLRB No. 93.

<sup>5</sup> 444 U.S. 672 (1980).

<sup>6</sup> 338 NLRB No. 92 (2003).

In her dissenting opinion, Member Liebman wrote:

[T]he U.S. Court of Appeals for the District of Columbia Circuit has asked the Board to supply a reasoned explanation for why this case is different from previous decisions in which the Board concluded that faculty members were managerial employees. . . . The majority neglects the principle that statutory exclusions must be interpreted narrowly to avoid denying rights, which the Act is intended to protect. Instead, the majority (1) broadly interprets previous cases finding managerial status and concludes that those cases dictate a finding of managerial status here, and (2) relies on evidence concerning the effectiveness of the faculty's recommendations with regard to curriculum and other matters that is far too thin to support a finding of managerial status.

Member Liebman concluded that the College has not met its burden of proof and has not adduced sufficient evidence that the faculty's recommendations are actually effective. Thus, she would reaffirm the Board's prior decision and find that the College has violated Section 8(a)(5) and (1) by refusing to recognize and bargain with the Union.

## **B. Election Objections**

### **1. Maintenance of Overbroad Work Rules**

In *Delta Brands, Inc.*,<sup>7</sup> a majority of the Board, contrary to the hearing officer, overruled the Union's (Machinists District Lodge 290, Local 1528) objections to an election conducted September 10, 2002, and certified the results of the election. The tally of ballots showed 8 for and 10 against, the Union.

At issue is whether the Employer maintained an unlawful rule (Rule 31) in its employee policy manual that restricted workplace solicitation. The hearing officer's initial recommendation was to set aside the election based on Rule 31. The Board thereafter remanded the case to the hearing officer to take additional evidence on the factual issue of whether Rule 31 had been disseminated to employees. In her supplemental report, the hearing officer reaffirmed her finding that the Employer had engaged in objectionable conduct as to Rule 31, which prohibits "[v]ending, soliciting, or collecting contributions for any purpose unless authorized by management."

Chairman Battista and Member Schaumber maintained that the rule was not adopted in response to the union's organizing campaign, but that

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<sup>7</sup> 344 NLRB No. 10 (Chairman Battista and Member Schaumber; Member Liebman dissenting).

it was part of a 36-page handbook, and that only one employee received the handbook during the critical period. They wrote: “[W]e have the mere presence of an overbroad rule in a much larger document, with no showing that any employee was affected by the rule’s existence, no showing of enforcement, and indeed no showing of any mention of the rule. . . . there is no showing that the mere existence of the rule could have affected the results of the election.” The majority observed that the burden is on the objecting party to prove its objections, and without such a presumption, that burden is not satisfied here. They concluded that their decision is supported by the approach followed in *Safeway, Inc.*<sup>8</sup>

In dissent, Member Liebman contended that under well-settled Board law, an employer’s mere maintenance of an unlawful rule is not only objectionable conduct, but also sufficient grounds to set aside an election. She said that as the Board has explained, “the maintenance of the rule, not its date of promulgation, enforcement, or the effects it had on employees’ specific conduct, is what is significant.” See *Pacific Beach Hotel*.<sup>9</sup>

Member Liebman further wrote that her colleagues insist that their decision is “not a departure from established Board law.” She contended that the majority reallocates the burden of proof to the objecting party to show more than that the rule was maintained. In her view, no prior decision of the Board has ever required such a showing. Member Liebman found that the majority’s approach to this case seeks a way around controlling precedent. She would set aside the election because she found that the Employer’s rule was unlawful and because the maintenance of that rule reasonably tended to coerce employees.

## 2. Prounion Campaign Conduct of Supervisors

The Board, in a 3–2 decision in *Harborside Healthcare, Inc.*,<sup>10</sup> reaffirmed long-standing Board precedent that pro-union supervisory conduct may be grounds for setting aside an election without there being an explicit threat of reprisal or promise of benefit. The majority was comprised of Chairman Battista and Members Schaumber and Meisburg. The dissenters were Members Liebman and Walsh.

The decision responded to a remand from the U.S. Court of Appeals for the Sixth Circuit in *Harborside Healthcare Inc. v. NLRB*.<sup>11</sup> The appellate court decision criticized the Board for finding pro-union supervisory conduct non-objectionable using a legal standard that

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<sup>8</sup> 338 NLRB 525 (2002).

<sup>9</sup> 342 NLRB No. 30, slip op. at 2-3 (2004).

<sup>10</sup> 343 NLRB No. 100 (Chairman Battista and Members Schaumber and Meisburg; Members Liebman and Walsh dissented).

<sup>11</sup> 230 F.3d 206 (2000).

deviated from earlier standing Board precedent. The standard applied appeared to require an explicit threat of reprisal or promise of benefit for such conduct to be objectionable. In its decision on remand, the Board disavowed that standard as “represent[ing] a departure from established precedent” and the language of relatively recent Board cases that seemed to apply it. The Board then reaffirmed its established standard, restating it to include the elements of the inquiry to be conducted in applying it. The restated two-part standard reads as follows:

I. Whether the supervisor’s pro-union conduct reasonably tended to coerce or interfere with the employees’ exercise of free choice in the election. This inquiry includes: (a) consideration of the nature and degree of supervisory authority possessed by those who engage in the pro-union conduct; and (b) an examination of the nature, extent, and context of the conduct in question.

II. Whether the conduct interfered with freedom of choice to the extent that it materially affected the outcome of the election, based on factors such as (a) the margin of victory in the election; (b) whether the conduct at issue was widespread or isolated; (c) the timing of the conduct; (d) the extent to which the conduct became known; and (e) the lingering effect of the conduct.

In determining whether the supervisory conduct affected the election outcome, the majority stated that it would consider, among other things, whether the employer opposed the union’s campaign, including any anti-union statements by higher-level officials and whether the employer disavowed the prounion supervisory conduct.

After emphasizing that it is incumbent on the Board to protect employees from the conduct of supervisors, whether pro-union or anti-union, which interferes with employees’ freedom of choice, the Board modified prior Board law involving the supervisory solicitation of union authorization cards. In lieu of the then-existing rule that such solicitation is not objectionable unless it “contains the seeds of potential reprisal, punishment or intimidation,” the Board adopted a rule that supervisory solicitation of union authorization cards is inherently coercive absent mitigating circumstances. The Board reasoned that a supervisor, by definition, has the power to affect the working life of employees, and the solicitation of cards affords the supervisor the opportunity to obtain a graphic illustration of who is prounion and, by the process of eliminating non-signers, who likely is not. Therefore, employees solicited by a supervisor would reasonably be concerned that the “right” response will be viewed with favor, and a “wrong” response with disfavor.

In dissent, Members Liebman and Walsh criticized the majority for reaching far beyond the issue raised by the Sixth Circuit's remand—whether actual threats or promises are required to find supervisory taint. In their view, the majority abandoned well-established precedent and declared a “restatement of the law governing pro-union conduct of supervisors” not sought by the court or the parties.

The dissent gave several reasons why the “new legal test” is problematic. First, it “minimizes the importance of . . . the employer's *antiunion* stance, which the Board has long recognized as limiting the impact of a pro-union supervisor's conduct”:

In that context, a pro-union supervisor acts against his employer's direct orders, and always at the risk of lawful discharge. In most workplaces, employees have little to fear from such a supervisor: they need simply bring his actions to the attention of another manager.

The dissent described the majority's failure to recognize the centrality of that factor as “not evenhanded” but “arbitrary.”

Second, the dissent strongly opposed the majority's restating of the law to treat as coercive pronoun supervisory conduct that the Board has previously recognized as legitimate. Importantly, the dissent warned that the majority's ruling that supervisory card solicitation is inherently coercive “jeopardizes the outcome of many elections” because such solicitation tends to be by borderline supervisors, who may be unaware of their supervisory status until their conduct is challenged:

To avoid creating a basis for setting aside an election, unions must now avoid using any person who might later be found to be a statutory supervisor to solicit authorization cards . . . . If unions err on the side of caution, the number of potential card solicitors will be reduced significantly, excluding many people who might be natural leaders . . . . If, on the other hand, unions guess wrong, the results of many elections will be subject to challenge. Either way, employees who want union representation lose.

A Board majority in *Chinese Daily News*,<sup>12</sup> reversed the hearing officer's recommendation to overrule the Employer's objections alleging that the pronoun campaign conduct of the Employer's supervisors tainted the election, and directed a second election.

The tally of ballots for the election held on March 19, 2001, showed 78 votes for and 63 votes against the Petitioner, Communications

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<sup>12</sup> 344 NLRB No. 132 (Chairman Battista and Member Schaumber; Member Liebman dissenting).

Workers, with 7 challenged ballots, an insufficient number to affect the results.

Chairman Battista and Member Schaumber agreed with the Employer's argument, based on the Board's decision in *Harborside Healthcare, Inc.*,<sup>13</sup> that the hearing officer erred in finding no objectionable conduct. The hearing officer found that the conduct at issue did not rise to the level of objectionable conduct under existing Board law in the absence of evidence of coercive statements, threats, or promises to employees during the prepetition signing of the cards. Chairman Battista and Member Schaumber found that Book Department Group Leader Ching Shan Lin's solicitation and collection of authorization cards from the book department employees whom he supervised was inherently coercive and that this conduct materially affected the outcome of the election. They found it unnecessary to address the Employer's remaining exceptions regarding other alleged objectionable conduct.

In dissent, Member Liebman found nothing objectionable in Lin's participation in the solicitation of cards from employees he supervised, or in any other conduct at issue in this case. She wrote: "Regrettably, this representation election has been at the Board for almost 4 years. During that time, the Board has reversed its approach to the solicitation of union authorization cards by supervisors and has decided to apply its new approach retroactively. Accordingly, the majority concludes that the election here must be set aside. I disagree in every respect. As explained in earlier dissents, the Board was wrong to change the law and wrong to apply it retroactively."

### **3. Alleged Threat of Job Loss**

In *TNT Logistics North America, Inc.*,<sup>14</sup> Chairman Battista and Member Schaumber overruled the Petitioner's (Teamsters Local 299) Objections 1 and 3 and certified the results of the election. Member Liebman dissented.

The tally of ballots for the mail ballot election held June 9–29, 2004 showed 17 votes for and 17 against the Petitioner, with no challenged ballots.

The unit employees are delivery drivers who work exclusively on the Employer's Home Depot account. The Union's Objection 1 claimed that Supervisors Mike Floyd and Chris Haynes threatened delivery driver Steve Cook with job loss if the Union was selected. During a discussion with Cook, Floyd responded that if the Union were selected, it would not

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<sup>13</sup> 343 NLRB No. 100 (2004).

<sup>14</sup> 345 NLRB No. 21 (Chairman Battista and Member Schaumber; Member Liebman dissenting).

be better. Haynes also volunteered that “Home Depot doesn’t like the Union; that if the Union comes in we wouldn’t have a job with Home Depot.” The hearing officer found that Haynes’ comments to Cook that Home Depot did not like the Union, and that employees servicing the Home Depot account would not be able to drive for Home Depot were the Union elected, exceeded the limits of an employer’s protected speech.

Chairman Battista and Member Schaumber disagreed. They wrote that an employer is free to communicate to his employees any of his general views of unionism or any of his specific views about a particular union so long as the communications do not contain a “threat of reprisal or force or promise of benefit.” Applying the standard set forth in *NLRB v. Gissel Packing Co.*,<sup>15</sup> they found that Haynes’ statement conveyed his personal “belief as to the demonstrably probable consequences beyond (the Employer’s) control,” based on objective fact, which is permissible.

Objection 3 concerned solicitation of grievances and the implication that grievances would be remedied. Floyd asked Cook, “What would make things better?” The hearing officer found the question constituted an improper solicitation of employee grievances.

In disagreeing with the hearing officer, the majority found that the question was consistent with the Employer’s established practice of soliciting employee concerns, a practice it had followed before the Union arrived on the scene. The majority noted that prior to the onset of any organizational efforts by the Petitioner, the Employer maintained an open door policy, under which employees would discuss work related issues and concerns directly with management. Although there was a union organizing campaign in progress, the majority found that the Employer was entitled to utilize its established open door policy to deal with employee grievances so long as it did not expressly or implicitly promise to remedy them.

Member Liebman wrote: “[T]he majority defends the Employer’s statement on grounds that actually establish that they were objectionable. Its failure to address a long line of precedent is startling. Today’s decision continues an unfortunate trend of breaking with precedent to give employers greater leeway in making coercive prediction about the effects of unionization. Accordingly, I dissent and would set the election aside, based on Petitioner’s Objection 1.”

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<sup>15</sup> 395 U.S. 575, 618 (1969).

**4. No Presumption of Dissemination of Threats of Plant Closure**

In *Crown Bolt, Inc.*,<sup>16</sup> the Board in a 3–2 decision held that an employer’s threat to close its facility in the event employees vote for union representation will not be presumed disseminated throughout the bargaining unit. The Board noted however that its holding is prospective only and that in all pending cases involving threats of plant closure, it will continue to rebuttably presume that such threats were widely disseminated.

The decision overruled the Board’s decision 4 years ago in *Springs Industries, Inc.*,<sup>17</sup> which held that plant-closure threats are presumed disseminated throughout the plant absent evidence to the contrary. *Springs Industries*, in turn, overruled *Kokomo Tube Co.*,<sup>18</sup> where the Board declined to presume dissemination of a threat of plant closure made to a single employee. The *Crown Bolt* majority concluded that *Kokomo Tube* “represents the better evidentiary rule in requiring the party that seeks to rely on dissemination throughout the plant to show it.”

In overruling *Springs Industries*, the *Crown Bolt* majority relied on several considerations. First, because the burden of proof in election-objection cases rests with the objecting party, *Springs Industries* “runs counter to the burden-allocation norm.” Second, while the holding of *Springs Industries* is limited to plant-closure threats, its rationale is not, so “there is no apparent basis for declining to extend [the dissemination presumption] to other kinds” of statements. Third, the presumption is unnecessary: if dissemination of plant-closure threats is “all but inevitable,” as the Board stated in *Springs Industries*, then it should be easy for the objecting party to prove. Fourth, employers face an undue burden in proving a lack of dissemination. Finally, circumstantial variations affect the probability of dissemination in any particular case, arguing against presuming dissemination in all closure-threat cases.

In their partial dissent, Members Liebman and Walsh characterized *Kokomo Tube* as an aberration from the Board’s “traditional practice” of presuming dissemination of plant-closure threats. Emphasizing the severity of such threats, the dissent rejected the majority’s view that circumstantial variations from case to case sufficiently affect the probability that such threats will be disseminated to warrant dispensing with the *Springs Industries* presumption. The dissent disagreed that dissemination should be easy for the objecting union to prove, stating that “employees are often reluctant, even afraid, to testify against their

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<sup>16</sup> 343 NLRB No. 86 (Chairman Battista and Members Schaumber and Meisburg; Members Liebman and Walsh dissented in part).

<sup>17</sup> 332 NLRB 40 (2000).

<sup>18</sup> 280 NLRB 357 (1986).

employer.” Correspondingly, the dissent suggested that the majority had exaggerated the difficulties faced by employers in rebutting the dissemination presumption. The dissent also defended the *Springs Industries* presumption on the ground of administrative efficiency. Finally, the dissent noted the consistency of the *Springs Industries* presumption with the analogous “lore of the shop” principle, under which the Board assumes that plant-closure threats and other serious unfair labor practices will live on in the lore of the shop by being disseminated to new employees months and even years after the event.

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## IV

### Unfair Labor Practices

The Board is empowered under Section 10(c) of the Act to prevent any person from engaging in any unfair labor practice (listed in Sec. 8) affecting commerce. In general, Section 8 prohibits an employer or a union or their agents from engaging in certain specified types of activity that Congress has designated as unfair labor practices. The Board, however, may not act to prevent or remedy such activities until an unfair labor practice charge has been filed with it. Such charges may be filed by an employer, an employee, a labor organization, or any other person irrespective of any interest he or she might have in the matter. They are filed with the Regional Office of the Board in the area where the alleged unfair labor practice occurred.

This chapter deals with decisions of the Board during fiscal year 2005 that involved novel questions or set precedents that may be of substantial importance in the future administration of the Act.

#### A. Employer Interference with Employee Rights

##### Maintenance of Work Rules

Chairman Battista and Members Schaumber and Meisburg concluded in *Lutheran Heritage Village-Livonia*<sup>1</sup> that the maintenance of work rules prohibiting “abusive and profane language,” “verbal, mental and physical abuse,” and “harassment. . . in any way” could not reasonably be understood as interfering with employees’ Section 7 rights under the National Labor Relations Act. Members Liebman and Walsh dissented.

The decision adopted the reasoning of the District of Columbia Circuit in *Adtranz, ABB Daimler-Benz Transportation, N.A., Inc. v. NLRB*.<sup>2</sup> That court reversed an earlier Board decision.<sup>3</sup> In *Adtranz*, the District of Columbia Circuit concluded that a rule prohibiting abusive or threatening language was lawful because it was based on the employer’s legitimate right to establish a “civil and decent” workplace and to protect itself from liability for workplace harassment by maintaining rules prohibiting conduct that could lead to liability. Adopting the court’s view, the Board majority in *Lutheran Heritage Village-Livonia* agreed that a rule prohibiting “abusive and profane language,” as well as rules prohibiting “verbal . . . abuse” and “harassment,” were lawful.

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<sup>1</sup> 343 NLRB No. 75 (Chairman Battista and Members Schaumber and Meisburg; Members Liebman and Walsh dissented).

<sup>2</sup> 253 F.3d 19 (D.C. Cir. 2001).

<sup>3</sup> 331 NLRB 29 (2000).

The majority in *Lutheran Heritage Village-Livonia* recognized that maintenance of a rule that does not expressly prohibit protected activity “can nonetheless be unlawful if employees would reasonably read it to prohibit Section 7 activity.” However, the Board said that employees in the *Lutheran Heritage* case would not reasonably read the rule in that way. “That is, reasonable employees would infer that the Respondent’s purpose in promulgating the challenged rules was to ensure a ‘civil and decent’ workplace, not to restrict Section 7 activity.” The majority also stated that where, as in this case, the rule does not refer to Section 7 activity, was not adopted in response to organizational activity, and had never been enforced to restrict Section 7 activity, “we will not conclude that a reasonable employee would read the rule to apply to such activity simply because the rule *could* be interpreted that way.”

In dissent, Members Liebman and Walsh observed that “the ill-defined scope of the Respondent’s ‘verbal abuse’ and abusive language” rules, as well as its “no harassment” rule, would reasonably tend to cause employees to “steer clear of the prohibited zone” and refrain from voicing disagreement with their terms and conditions of employment or vigorously attempting to organize skeptical workers.

The dissent explained that it relied “not only on the fact that the overbroad rules at issue here could reach activity that is protected, but also on the particular language of the rules, the Respondent’s maintenance of other facially unlawful rules, and the existence of seemingly duplicative rules as providing a context in which employees would reasonably construe the rules as interfering with their Section 7 activity.”

The dissenting Members asserted that, “[a]lthough we agree with our colleagues and the District of Columbia Circuit that employers have a legitimate interest in protecting themselves by maintaining rules that discourage conduct that might result in employer liability, . . . that interest is appropriately subject to the requirement that employers articulate those rules with sufficient specificity that they do not impinge on employees’ free exercise of Section 7 rights.”

In *Guardsmark, LLC*,<sup>4</sup> a Board majority of Chairman Battista and Member Schaumber affirmed the administrative law judge’s conclusion that the Respondent did not violate the Act by maintaining a rule that forbids employees from fraternizing with co-employees or with the employees of the Respondent’s customers.

Member Liebman found, contrary to her colleagues, that the Respondent’s rule violated Section 8(a)(1). She adhered to the views

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<sup>4</sup> 344 NLRB No. 97 (Chairman Battista and Member Schaumber; Member Liebman dissenting).

expressed in her dissent in *Lafayette Park Hotel*,<sup>5</sup> where she concluded that a similar rule did not adequately define what is proscribed and that the ambiguity in the rule tended to chill reasonable employees in the exercise of their Section 7 rights.

The majority wrote in explaining their reasons for concluding that the Respondent's rule would not reasonably tend to chill protected employee activity:

The Respondent's proscription against fraternization appears alongside proscriptions on 'dat[ing,] or becom[ing] overly friendly with the client's employees or with co-employees.' That being so, we believe that employees would reasonably understand the rule to prohibit only personal entanglements, rather than activity protected by the Act. In our view, it would be an unreasonable stretch for an employee to infer that speaking to others about terms and conditions of employment is a 'fraternization' that is condemned by the rule. As in *Lutheran Heritage Village*,<sup>6</sup> our dissenting colleague continues to advocate finding a violation where an employee could *possibly* perceive a conflict between a rule and protected activity. We, instead, limit the Board's reach to rules, unlike this one, where an employee would reasonably perceive such a conflict.

We recognize that the rule in *Lafayette Park Hotel* prohibited fraternization with guests, while the rule here prohibits fraternization with client employees or coemployees. However, in context, the rule here is reasonably understood as prohibiting personal entanglements, rather than activity protected by the Act.

Moreover, as the judge noted and our dissenting colleague ignores, the Respondent's rule is designed 'to provide safeguards so that security will not be compromised by interpersonal relationships either between Respondent's fellow security guards or between Respondent's security guards and clients' employees.' Given those heightened security concerns, we think the Respondent's justification for its fraternization rule is even stronger than that of the employer in *Lafayette Park Hotel*, where we concluded that a fraternization rule was a proper means for preventing the 'appearance of favoritism, claims of sexual harassment, and employee dissension created by romantic relationships in the workplace.'<sup>7</sup>

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<sup>5</sup> 326 NLRB 824 (1998), *enfd.* 203 F.3d 52 (D.C. Cir. 1999).

<sup>6</sup> 343 NLRB No. 75.

<sup>7</sup> 326 NLRB at 827 *fn.* 14.

Member Liebman believes that a reasonable employee certainly could understand the Respondent's rule to sweep much more broadly than prohibiting only personal entanglements with clients and coworkers. She noted that the primary meaning of the term "fraternize" is "to associate in a brotherly manner," Webster's New World Dictionary 555 (2d ed. 1984), and that kind of association is the essence of workplace solidarity. Member Liebman decided that employees could reasonably understand the rule to interfere with their right under Section 7 to join together for mutual aid or protection and accordingly, the rule is unlawful under the framework established in *Lafayette Park Hotel* and *Lutheran Heritage Village*.

## **B. Employer Discrimination Against Employees**

### **Independent Contractor Status of Newspaper Carriers**

In *St. Joseph News-Press*,<sup>8</sup> the Board majority found, contrary to the administrative law judge, that the Respondent's newspaper carriers and haulers are not employees under Section 2(3) of the Act, but are independent contractors excluded from the Act's protection under the standards of *Roadway Package Systems*,<sup>9</sup> and *Dial-A-Mattress Operating Corp.*<sup>10</sup> Accordingly, the majority dismissed the complaint allegations that the Respondent committed numerous violations against the independent contractors, including discharging carriers because of their activities for Teamsters Local 460.

The Respondent publishes a daily newspaper in Saint Joseph, Missouri. Haulers pick up the bundled papers at the plant and bring them to common drop points, where carriers pick them up. Carriers deliver papers to the Respondent's customers. They also place papers in newspaper racks, deliver to dealers, and drop newspapers at the post office to be mailed to subscribers.

The majority found that a comparison of the common law factors in this case with those factors in *Roadway* and *Dial-A-Mattress* demonstrated, on balance, that the carriers are independent contractors. The majority noted these factors in finding that the carriers in *St. Joseph News-Press* are independent contractors. The carriers provide their own "tools" of work, their vehicles and supplies; they receive little training from the Respondent; they are not supervised by the Respondent while performing the work; they may hire their own employees; they may work for more than one party; they can solicit new business; and they can subcontract their routes to others. Addressing the argument of the Union

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<sup>8</sup> 345 NLRB No. 31 (Chairman Battista and Member Schaumber; Member Liebman dissenting).

<sup>9</sup> 326 NLRB 842 (1998).

<sup>10</sup> 326 NLRB 884 (1998).

and its amicus that the carriers should be found to be employees because of their asserted lack of bargaining power, the majority explained that the status of persons as employees and independent contractors does not turn on differences in their relative bargaining power.

Contrary to the majority's view, Member Liebman found that the Respondent's substantial economic advantage over the carriers results in a relationship of economic dependence on the newspapers and is persuasive evidence that the carriers are employees, who are substantially dependent on the Respondent for their livelihood, not independent contractors who are economically independent business people. She criticized the majority for concluding that economic dependence was not a relevant factor in determining employee status under the National Labor Relations Act, as it is under other federal statutes regulating the workplace. She observed that:

As developing business practices blur the distinction between a classic employee and a classic independent contractor, the Board must ensure that the rights guaranteed by the Act do not erode for workers Congress intended to protect.

## **C. Employer Bargaining Obligations**

### **1. Section 8(d) Contract Modification**

Chairman Battista and Member Schaumber in *Bath Iron Works Corp.*<sup>11</sup> reversed the administrative law judge and dismissed the complaint allegations that the Respondent violated Section 8(a)(1) and (5) and Section 8(d) of the Act. Member Liebman dissented.

The central issue is whether the Respondent violated the Act in 1998 by merging its Bath Iron Works Pension Plan (the Plan) into the larger pension plan of its corporate parent, General Dynamics, without the consent of the three Charging Party Unions (Machinists Locals S-6 and S-7, District 4 and Bath Marine Draftsmen's Assn.). The judge found that the merger was a mandatory subject of bargaining, that the Respondent modified the collective-bargaining agreements (CBAs) without the Unions' consent, that the Unions had not clearly and unmistakably waived their statutory right to bargain over the merger, and thus, the merger of the plans was unlawful.

The Respondent argued that, contrary to the General Counsel, the Plan documents are part of the CBAs and give the Respondent the right to merge the Plan; that section 12.2 of the Plan grants the Respondent the right to terminate the Plan; and that there was no contract modification

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<sup>11</sup> 345 NLRB No. 33 (Chairman Battista and Members Schaumber; Member Liebman dissenting).

because it acted consistent with the authority given it by the CBAs and Plan documents.

The majority agreed with the Respondent's argument that the Plan documents are a part of the CBAs and that the Respondent had the authority to implement the merger without the Unions' consent. They wrote: "[T]he plan documents are arguably a part of the CBAs, and they arguably give the Respondent the authority to effect the merger. Thus, the Respondent's interpretation of the CBAs has a sound arguable basis. The General Counsel's interpretation, that the Plan documents are not part of the CBAs and do not contain a right to merge the Plan, is reasonable, but no more so than the Respondent's." The majority concluded that the General Counsel failed to prove that the Respondent modified the contracts with the Unions.

In dissent, Member Liebman contended that the majority erred in rejecting the traditional approach, applied by the judge, which asks whether the contract language amounts to a clear and unmistakable waiver of the Unions' right to bargain. She found that none of the three collective-bargaining agreements involved here contained any language that, by its express terms, authorized the Respondent to act unilaterally with respect to the pension plan during the life of the agreements, much less to merge it out of existence.

Member Liebman further contended that even if the majority were right to focus instead on whether there was a "sound arguable basis" for the employer's contract interpretation—an approach that favors Board deferral to another forum—a statutory violation should still be found.

## **2. Withdrawal of Recognition After Consolidation of Operations**

In *Nott Co., Equipment Division*,<sup>12</sup> Chairman Battista and Member Schaumber, with Member Liebman dissenting, dismissed the complaint in its entirety. The complaint alleged that the Respondent violated Section 8(a)(1) of the Act by prohibiting union discussion among employees during worktime and violated Section 8(a)(5) and (1) by: failing to comply with the collective-bargaining agreement and to recognize and bargain with Operating Engineers Local 49; withdrawing recognition from the Union and repudiating the collective-bargaining agreement; prohibiting union business agents from gaining access to the Respondent's facility or speaking to employees during worktime; and announcing employee restrictions on talking.

The Respondent is engaged in the sale, rental, and service of forklifts. It has had a 40-year collective-bargaining relationship with the Union. The parties' most recent contract was effective from Aug. 1, 1996

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<sup>12</sup> 345 NLRB No. 23 (Chairman Battista and Member Schaumber; Member Liebman dissenting).

through July 31, 2000. The bargaining unit consists of forklift employees working at the Respondent's Bloomington facility and at other permanent shops and field-mechanic resident locations in Minnesota. In Oct. 1998, the Respondent purchased the assets of Metro Forklifts in Maple Grove, Minnesota, a nonunion business, and hired the 14 Metro employees. The Respondent closed the Maple Grove facility in Nov. 1998 and consolidated the entire operation at Bloomington. Subsequently, the Respondent repudiated its contract with the Union and withdrew recognition, claiming that, because of the addition of the Metro mechanics, the Union no longer represented a majority of the bargaining unit employees.

The parties stipulated that the issue is whether Respondent's withdrawal of recognition of the Union is permissible because the Union lost majority status once the former Metro employees were employed at the Bloomington location.

The majority held that an accretion analysis is appropriate. They noted that the unrepresented group sought to be accreted is equal in number to the existing represented group (14 former Metro employees and 14 existing Nott employees). Applying accretion principles, the majority concluded that the Respondent lawfully withdraw recognition from the Union because the Union lost majority status once the former Metro employees were employed at the Bloomington location. Given that the previously represented employees are no longer a majority of the new overall unit, the majority decided there is no bargaining obligation in the unit and accordingly, as the General Counsel and the Charging Party acknowledge, the unilateral changes that occurred on Nov. 13 were not unlawful because the Union no longer had Section 9(a) status.

Member Liebman found that as a matter of law, the Union was entitled to a conclusive presumption of majority status through the term of its contract, citing *Auciello Iron Works, Inc. v. NLRB*,<sup>13</sup> where a unanimous Supreme Court endorsed the Board's policy affording unions a conclusive presumption of majority status during the term of a collective-bargaining agreement. She observed that under the applicable contract-bar principles, the increase in the size of the bargaining unit was not substantial enough to create an exception to the conclusive presumption. Also, there was no change in the nature of the Respondent's operations or in the functions of the employees in the overall unit. Accordingly, Member Liebman would find that the Respondent's withdrawal of recognition violated Section 8(a)(5) and (1)

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<sup>13</sup> 517 U.S. 781 (1996).

and therefore, the Respondent further violated Section 8(a)(5) and (1) as alleged in the complaint.

## V

### **Supreme Court Litigation**

During fiscal year 2005, the Supreme Court decided, on the merits, no cases involving the Board as a party. The Board did not participate as amicus in any cases before the Court. The Court denied six private party petitions for certiorari in Board cases, and granted none.



## VI

### Enforcement Litigation

#### A. Refusal to Bargain

##### 1. “Unusual circumstances” justification for untimely withdrawal from a multiemployer association

The Board has long held that an employer or a union cannot withdraw from otherwise voluntary multiemployer bargaining once collective-bargaining negotiations based on an existing multiemployer bargaining unit have begun, absent mutual consent or unusual circumstances.<sup>1</sup> The Board has construed the “unusual circumstances” exception very narrowly, as where the employer is under extreme financial pressure or the bargaining unit is no longer viable.<sup>2</sup> In *Chel LaCort*,<sup>3</sup> where employer-members of the multiemployer unit sought to justify their untimely withdrawal on the undisclosed early commencement of contract negotiations, the Board found no unusual circumstances in the multiemployer association’s failure, even if intentional, to notify its members of the start of those negotiations.<sup>4</sup> In that case, the Board suggested, however, that evidence of “collusion or conspiracy” involving the union regarding the start of negotiations might suffice to establish an unusual circumstance.<sup>5</sup> Two cases decided this year addressed that issue.

In *Resort Nursing Home v. NLRB*,<sup>6</sup> the District of Columbia Circuit upheld the Board’s *Chel LaCort* rule that the early commencement of negotiations without notice does not constitute unusual circumstances justifying untimely withdrawal.<sup>7</sup> Pointing to the Board’s decision in *D. A. Nolt, Inc.*,<sup>8</sup> the court agreed with the Board that “collusion” contemplated by *Chel LaCort* entailed something more than a mere failure, even if deliberate, to provide notice of the commencement of negotiations; it “clearly contemplates actions by the union and the employer association that are deliberately intended to prevent an employer from exercising its right to withdraw.”<sup>9</sup> The court rejected the

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<sup>1</sup> *Retail Associates, Inc.*, 120 NLRB 388, 395 (1958).

<sup>2</sup> *Charles D. Bonanno Linen Service, Inc. v. NLRB*, 454 U.S. 404, 411 (1982).

<sup>3</sup> 315 NLRB 1036 (1994).

<sup>4</sup> *Id.* at 1036.

<sup>5</sup> 315 NLRB at 1036 fn. 5.

<sup>6</sup> 389 F.3d 1262 (D.C. Cir. 2004).

<sup>7</sup> *Id.* at 1265, 1268–1271.

<sup>8</sup> 340 NLRB No. 152 (2003).

<sup>9</sup> 389 F.3d at 1271 (quoting *D.A. Nolt, Inc.*, 340 NLRB No. 152 (2003)).

employer's claim that the evidence before the Board compelled a finding of impermissible collusion, "for the simple reason that a mere failure to provide notice, even if deliberate, is insufficient," and, moreover, it was shown that external forces drove "the early commencement and quick pace of the negotiations."<sup>10</sup>

In *NLRB v. D.A. Nolt*,<sup>11</sup> however, where the union and the employer association agreed to keep their negotiations secret from their respective memberships, and then conducted their negotiations in secret, the Third Circuit rejected what it viewed as the Board's "restricted definition" of "collusion."<sup>12</sup> "Whether the [union and employer association] deliberately *intended* to prevent D. A. Nolt from exercising its right to withdraw [from the multiemployer bargaining unit] is not as significant as whether *the effect* of their actions was to prevent D. A. Nolt from exercising its right to withdraw."<sup>13</sup> In the court's view, to establish "unusual circumstances" justifying an untimely withdrawal, "[i]t is enough to prove that there was a secret agreement that resulted in harm to another;" "it is not necessary to show that the parties . . . specifically intended to defraud a person of his rights to prove 'collusion.'"<sup>14</sup> Thus, according to the court, irrespective of the parties' intent, their conduct deprived D. A. Nolt of its right to withdraw from the multiemployer group prior to the commencement of negotiations and therefore justified its untimely withdrawal.<sup>15</sup>

## **2. Mandatory subject of bargaining**

The statutory duty to bargain is mandatory with respect to wages, hours, and terms and conditions of employment.<sup>16</sup> Thus, an employer's unilateral change in a subject that is "plainly germane to the 'working environment'"<sup>17</sup> without first bargaining with the union to impasse violates the Act.<sup>18</sup> In *Brewers & Maltsters, Local Union No. 6 v. NLRB*,<sup>19</sup> the District of Columbia Circuit agreed with "the Board's legal conclusion that the installation and use of hidden surveillance cameras in the workplace constitutes a mandatory subject of bargaining, . . .

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<sup>10</sup> 389 F.3d at 1271.

<sup>11</sup> 406 F.3d 200 (3d Cir. 2005), petition for panel rehearing granted, 412 F.3d 477 (3d Cir. 2005) (correcting judgment to enforce uncontested portions of Board's order).

<sup>12</sup> 406 F.3d at 204.

<sup>13</sup> *Id.* at 205.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> See *Litton Fin. Printing Div. v. NLRB*, 501 U.S. 190, 198–199 (1991).

<sup>17</sup> *Ford Motor Co. v. NLRB*, 441 U.S. 488, 498 (1979) (citation omitted).

<sup>18</sup> *Litton*, 501 U.S. at 198.

<sup>19</sup> 414 F.3d 36 (2005).

especially in light of the cameras' effects on the employees' job security . . . ."<sup>20</sup> Finding sufficient evidence that the hidden surveillance cameras were trained on areas of the plant where employees performed monthly work assignments and on a portion of the roof that was a de facto break area, the court affirmed "the Board's determination that the hidden surveillance cameras were located within the working environment and therefore that their installation and use was a mandatory subject of bargaining."<sup>21</sup> Thus, the employer violated the Act by using the cameras without bargaining over them.

The court, however, remanded the case for the Board to further address the appropriate remedy to be issued in connection with the unlawful unilateral installation of the hidden surveillance cameras. The employer had disciplined 16 employees whose misconduct was discovered through its use of the unlawfully installed cameras. Concluding that it would be inconsistent with the policies of the Act, and with public policy generally, to reward employees who engaged in unprotected conduct, the Board refused to order make-whole relief for the disciplined employees.<sup>22</sup> The court held that while it was for the Board to determine whether or not reinstatement and backpay are appropriate, the Board had not engaged in reasoned decision making because it had failed to adequately distinguish precedent supporting make-whole relief.<sup>23</sup> The court remanded for the Board to "apply, distinguish adequately, or overrule those precedents."<sup>24</sup>

### 3. Repudiation of a collective-bargaining agreement

The Board's longstanding and judicially approved policy is to defer its unfair labor practice jurisdiction prospectively to an agreed-upon arbitration procedure where, for example, the dispute turns primarily on interpreting, construing, or applying the terms of a collective-bargaining agreement.<sup>25</sup> However, the Board has not hesitated to find a refusal-to-bargain violation where an employer has sought to determine which grievances should be arbitrated, thus, in effect, engaging in a unilateral

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<sup>20</sup> Id. at 44.

<sup>21</sup> Id.

<sup>22</sup> 342 NLRB No. 49 (2004).

<sup>23</sup> 414 F.3d at 47–49 (citing *Tocco, Inc.*, 323 NLRB 480 (1997) (ordering reinstatement of employees who were discharged for drug use, where positive drug tests resulted from employer's unilateral change to its standard for drug testing), and *Great Western Produce*, 299 NLRB 1004 (1990) (ordering reinstatement of employee who was disciplined for tardiness and absenteeism, where the employer detected those failings through unilaterally imposed recordkeeping system)).

<sup>24</sup> 414 F.3d at 48.

<sup>25</sup> *Hammontree v. NLRB*, 925 F.2d 1486, 1494, 1500 (D.C. Cir. 1991) (en banc).

modification or wholesale repudiation of the collective-bargaining agreement.<sup>26</sup>

In *Exxon Chemical Co. v. NLRB*,<sup>27</sup> the District of Columbia Circuit affirmed the Board’s finding that the employer, which was in the process of ceasing operations, unlawfully refused to arbitrate three pending grievances, which constituted the totality of the collective-bargaining issues remaining between the parties. Rejecting the employer’s claim that its conduct implicated only a breach of contract remediable in federal district court, the court observed, “that conduct may constitute a breach remediable in the courts does not mean that the Board may not proscribe it as an unfair labor practice.”<sup>28</sup> The court approved the Board’s finding that the circumstances—in particular, that the parties “were in an end-game situation . . . [when Exxon] walked away from what was left of the [collective-bargaining agreement] during a time when unit employees and the Union were most vulnerable”<sup>29</sup>—demonstrated that the employer’s refusal to arbitrate was tantamount to a wholesale repudiation or unilateral modification of the agreement, in violation of its statutory duty to bargain in good faith.<sup>30</sup>

## **B. Waiver of Individual Rights**

A union may waive certain statutory rights of employees, but may not bargain away rights affecting employees’ selection of their bargaining representative.<sup>31</sup> Two cases decided this year implicated union waivers of employee rights.

In *Titanium Metals Corp. v. NLRB*,<sup>32</sup> the District of Columbia Circuit—addressing an issue not explicitly decided in the underlying Board decision—held that a union may waive an employee’s right to engage in expressive activity, namely, to publish a “safety newsletter” touching on various terms and conditions of employment and criticizing management.<sup>33</sup> The Board had found that the employer unlawfully discharged the employee for engaging in that protected activity, and had declined to defer to a grievance settlement between the employer and the

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<sup>26</sup> 3 *State Contractors, Inc.*, 306 NLRB 711, 715 (1992), and cases cited.

<sup>27</sup> 386 F.3d 1160 (2004).

<sup>28</sup> *Id.* at 1165.

<sup>29</sup> *Id.* at 1166.

<sup>30</sup> *Id.*

<sup>31</sup> *Metro Edison Co. v. NLRB*, 460 U.S. 693, 705, 707 fn.11 (1983) (employer may not impose more severe sanctions on union officials for participating in an unlawful strike, but union may waive that statutory protection by clearly imposing contractual duties on its officials to ensure integrity of no-strike clause); *NLRB v. Magnavox*, 415 U.S. 322 (1974) (unions cannot waive statutory rights affecting the employees’ free choice of a bargaining representative).

<sup>32</sup> 392 F.3d 439 (2004), reh’g denied (Feb. 11, 2005).

<sup>33</sup> *Id.* at 447.

union—which stated that the employee had not been discharged for exercising that statutory right—because that settlement failed to satisfy the “fair and regular” requirement of the Board’s deferral policy.<sup>34</sup> Concluding that the Board abused its discretion in declining to defer to the grievance settlement, the court first stated, “[t]here is no doubt that employee discipline of the sort implicated in this case falls within the compass of waiveable rights that are subject to collective bargaining and grievance settlements.”<sup>35</sup> The court also rejected the Board’s determination that the grievance settlement did not meet the Board’s deferral standards. In the court’s view, the union had broad discretion to modify the employee’s waiveable rights through collective bargaining, and did so in the grievance settlement, and the Board could not intervene merely because that settlement “was not to the Board’s liking” and offended the Board’s “abstract sense of what is right.”<sup>36</sup>

At issue in the second case, *Lee v. NLRB*,<sup>37</sup> was what the Board characterized as a “novel issue”<sup>38</sup>—whether the employer phone company and the union representing its employees violated the Act by negotiating and implementing a contractual provision requiring employees to wear uniforms bearing embroidered company and union logos. As a threshold matter, the Board acknowledged that the uniform requirement involved some intrusion on the Section 7 rights of employees who objected to wearing the union logo, but that any pronoun message conveyed was “muted” by the union logo’s placement alongside the employer’s logo on the uniform.<sup>39</sup> The Board further determined that any intrusion with the employees’ rights was lawfully justified by “special circumstances” that “implicate[d] competing, legitimate interests under the Act.”<sup>40</sup>

The Fourth Circuit found that substantial evidence did not support the Board’s finding that special circumstances existed to justify impinging on employees’ right to refrain from wearing union insignia.<sup>41</sup> The court, assuming, without deciding, that the employer could require the display of the union logo if the absence of such a logo would unreasonably interfere with its public image, found nothing in the record to support the Board’s finding that the logo advanced the employer’s public-image

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<sup>34</sup> Id. at 444–445.

<sup>35</sup> Id. at 447.

<sup>36</sup> Id. at 449.

<sup>37</sup> 393 F.3d 491 (4th Cir. 2005).

<sup>38</sup> *Bellsouth Telecommunications, Inc.*, 335 NLRB 1066, 1066 (2001).

<sup>39</sup> Id.

<sup>40</sup> Id.

<sup>41</sup> 393 F.3d at 495.

business objectives.<sup>42</sup> The court rejected the Board's conclusion that the twin logos communicated the existence of a cooperative collective-bargaining relationship that would inure to the customers' benefit, finding instead that "the public may view the union logo with suspicion and associate it with service disruptions and labor disputes . . . particularly in a right to work [s]tate such as North Carolina [where the dispute arose]."<sup>43</sup> The court added that a person viewing an employee wearing the union logo might reasonably conclude that the employee is a union member and supports the union.<sup>44</sup> Thus, according to the court, the requirement could not be justified by public-image concerns because there is no evidence that any particular message is communicated by the required display of the union logo.<sup>45</sup>

The court also dismissed the Board's reliance on the uniform requirement's origins in the collective-bargaining process as a special circumstance justifying the requirement, finding no precedent suggesting that "collectively bargained provisions fall within the 'special circumstances' that permit regulation of union insignia."<sup>46</sup> Rather, the court explained, the statutory right to refrain from supporting the union, which the court found implicated in this case, is "integral to employees' rights to choose their bargaining representative and thus cannot be bargained away by either the union or the company."<sup>47</sup>

### **C. Access to Private Property**

In *Republic Aviation Corp. v. NLRB*, the Supreme Court held that *employees* may engage in protected union solicitation on their employer's premises during nonworking time.<sup>48</sup> By contrast, in *NLRB v. Babcock & Wilcox Co.*,<sup>49</sup> the Supreme Court recognized that the distinction between an "employee" and a "nonemployee" is one "of substance,"<sup>50</sup> and held that "an employer may validly post his property against *nonemployee* distribution of union literature."<sup>51</sup> The Supreme Court reaffirmed that holding in *Lechmere, Inc. v. NLRB*,<sup>52</sup> clarifying

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<sup>42</sup> Id. at 495–496.

<sup>43</sup> Id. at 496 (citation omitted).

<sup>44</sup> Id.

<sup>45</sup> Id.

<sup>46</sup> Id. at 497.

<sup>47</sup> Id.

<sup>48</sup> 324 U.S. 793, 803–804 (1945).

<sup>49</sup> 351 U.S. 105 (1956).

<sup>50</sup> Id. at 113.

<sup>51</sup> Id. at 112.

<sup>52</sup> 502 U.S. 527 (1992).

that only rarely will nonemployees be permitted access to private property to engage in activity protected the Act.

A question not answered in either *Republic Aviation* or *Babcock and Lechmere* was before the District of Columbia Circuit this year in *ITT Industries, Inc. v. NLRB*.<sup>53</sup> In *ITT*, a small group of off-duty employees, seeking to organize a multi-plant bargaining unit, were denied access to the parking lot of another plant of their employer to solicit employees working at that facility. The Board initially found a violation,<sup>54</sup> relying on its test in *Tri-County Medical Center, Inc.*, that “except where justified by business reasons, a rule which denies off-duty employees entry to parking lots, gates, and other outside nonworking areas will be found invalid.”<sup>55</sup> On appeal, the court denied enforcement of the Board’s order and remanded the case to the Board.<sup>56</sup> While recognizing that no Supreme Court decision answered the precise question presented, the court concluded that the Board had failed to explain why “trespassing off-site employees possess access rights equivalent to those enjoyed by on-site employee invitees” and “why the scope of such rights should be defined by the same *Tri-County* balancing test used to delineate the scope of on-site employee access rights.”<sup>57</sup>

On remand, the Board reaffirmed its original order on different grounds, relying on its intervening decision in *First Healthcare Corp.*<sup>58</sup> In that case, the Board, guided by the court’s initial decision in *ITT*, concluded that similarly situated, off-site employees possess nonderivative, Section 7 rights that, on balance, entitle them to access to the outside, nonworking areas of the employer’s property, except where justified by business reasons.<sup>59</sup>

Enforcing the Board’s supplemental order, the District of Columbia Circuit upheld the Board’s *First Healthcare* test and its application in *ITT*.<sup>60</sup> The court agreed with the Board that off-site employees are fundamentally different from the nonemployee union organizers in *Lechmere*, because they are “employees of the employer who would exclude them from its property.”<sup>61</sup> The court further agreed with the Board that the off-site employees’ right was “personal rather than

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<sup>53</sup> 413 F.3d 64 (D.C. Cir. 2005).

<sup>54</sup> 331 NLRB 4 (2000).

<sup>55</sup> 222 NLRB 1089 (1976).

<sup>56</sup> *ITT Industries, Inc. v. NLRB*, 251 F.3d 995 (D.C. Cir. 2001).

<sup>57</sup> *Id.* at 1005.

<sup>58</sup> 336 NLRB 646 (2001), *enfd.*, 344 F.3d 523 (6th Cir. 2003).

<sup>59</sup> 336 NLRB at 648.

<sup>60</sup> 413 F.3d 64, 70–74 (2005).

<sup>61</sup> *Id.* at 70.

derivative,” because, in making common cause with similarly situated employees of the same employer at another facility, they are seeking to advance their own interests, not just those of the employees they target.<sup>62</sup> Finally, the court determined that the Board had reasonably taken account of the employer’s property interest by acknowledging that the situation of off-site employees implicates some distinct considerations from those of either nonemployees or on-site employees, and that the Board would take into account an employer’s heightened property concerns when off site, as opposed to on site, off-duty employees sought access.<sup>63</sup>

On the facts of the case, the court agreed that the off-site employees were exercising nonderivative Section 7 rights in seeking to organize the on-site employees into a multi-facility bargaining unit, and that the legitimate property concerns raised by the employer—vandalism and safety—did not, on the record, justify the employer’s total exclusion of the off-site employees from the employer’s parking lot.<sup>64</sup>

## **D. Remedial Authority**

### **1. Extraordinary remedies**

Section 10(c) of the Act authorizes the Board, upon finding a violation of the Act, to order the violator to cease and desist from the unlawful conduct and “to take such affirmative action . . . as will effectuate the policies of [the] Act . . . .”

In *Federated Logistics and Operations v. NLRB*,<sup>65</sup> the District of Columbia Circuit upheld the Board’s ordering of certain extraordinary remedies in a case where the Board had found extensive and serious violations of the Act. The Board issued a broad cease-and-desist order, prohibiting the employer from violating the Act in any manner; an order requiring the employer to furnish the union with the names and addresses of all employees in the bargaining unit the union was seeking to organize and to update that information every 6 months for 2 years or until the Board certified the results of a rerun election; and an order requiring a responsible management official of the employer, or a Board agent in the presence of such an official, to read to all unit employees the remedial notice which the employer was required to post.<sup>66</sup>

The court viewed the numerous kinds of unfair labor practices committed as justifying the Board’s conclusion that the employer’s

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<sup>62</sup> Id.

<sup>63</sup> Id. at 72–73.

<sup>64</sup> Id. at 74, 75.

<sup>65</sup> 400 F.3d 920 (D.C. Cir. 2005), enforcing 340 NLRB No. 36 (2003), discussed at 68 NLRB Ann. Rep. 76–77 (2003).

<sup>66</sup> Id. at 923.

violations were sufficiently persistent and widespread to warrant a broad cease-and-desist order. The required furnishing of employee names and address furthered the objectives of the Act by encouraging an informed electorate and allowing the union the same right of access to employees which the employer already had. Finally, the commission of many of the violations by high-level management officials showed a particularized need for the reading requirement, which, as the Board had found, was necessary to make it clear to employees that both the employer and its managers were bound by the requirements of the Act.<sup>67</sup>

## 2. Remedying discrimination by a successor employer

“[A] successor-employer is ordinarily free to set initial terms on which it will hire the employees of a predecessor,”<sup>68</sup> and is free to refuse to hire its predecessor’s employees for legitimate reasons.<sup>69</sup> The successor-employer, however, violates the Act by refusing to hire its predecessor’s employees in order to avoid its obligation to bargain with the union.<sup>70</sup> Where it has done so, “the successor loses the right to set initial terms and conditions of employment and violates the Act if it unilaterally alters the predecessor’s terms.”<sup>71</sup> To remedy that unlawful conduct, the Board typically requires the wrongdoing successor-employer “to reinstate the terms and conditions of employment in effect under [its predecessor] in order to restore the situation to what it would have been absent unlawful conduct.”<sup>72</sup>

In *NLRB v. Yonkers Associates, 94 L.P.*,<sup>73</sup> the Second Circuit, reaffirming that remedy, rejected the successor-employer’s argument that its unilaterally-altered terms were the best measure for calculating back pay. In that case, 3 months after initially refusing to hire its predecessor’s employees because of their union membership, the successor-employer offered the employees reinstatement on unilaterally-altered terms, which the employees accepted to return to work.<sup>74</sup> Relying on dicta in *NLRB v. Staten Island Hotel Limited Partnership*,<sup>75</sup> in which the court commented that, “[i]f it were possible to determine the terms of employment . . . to which former employees might have agreed,

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<sup>67</sup> Id. at 928–930.

<sup>68</sup> *NLRB v. Burns Int’l Security Servs., Inc.*, 406 U.S. 272, 294 (1972).

<sup>69</sup> *Fall River Dyeing & Refinishing Corp. v. NLRB*, 482 U.S. 27, 40 (1987).

<sup>70</sup> Id.

<sup>71</sup> *U.S. Marine Corp. v. NLRB*, 944 F.2d 1305, 1320 (7th Cir. 1991) (en banc).

<sup>72</sup> Id. at 1320–1321.

<sup>73</sup> 416 F.3d 119 (2005).

<sup>74</sup> Id. at 120.

<sup>75</sup> 101 F.3d 858 (2d Cir. 1996).

we might prefer an award of back pay at those hypothetical . . . rates,”<sup>76</sup> the successor-employer argued that the unilaterally-altered terms were the best measure of back pay because those were the terms to which the employees in fact agreed.<sup>77</sup> Rejecting that argument, the court explained that, “[r]ead . . . in context, *Staten Island Hotel* clearly holds that a successor-employer’s *illegally*-set employment terms cannot provide the basis for an alternative measure of the back pay due for Act violations.”<sup>78</sup> Thus, because the successor-employer “made its hiring decisions on a basis that unlawfully discriminated against former employees,” it is “hardly clear what terms would have been reached had [it] not so discriminated.”<sup>79</sup>

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<sup>76</sup> Id. at 862.

<sup>77</sup> 416 F.3d at 122.

<sup>78</sup> Id. (emphasis in original).

<sup>79</sup> Id. (quoting *Staten Island Hotel*, 101 F.3d at 862).

## VII

# Injunction Litigation

### A. Injunction Litigation Under Section 10(j)

10(j) of the Act empowers the Board, in its discretion, to petition a U.S. district court for appropriate, temporary injunctive relief or restraining order in aid of an unfair labor practice proceeding. Section 10(j) proceedings can be initiated after issuance of an unfair labor practice complaint under Section 10(b) of the Act against any employer or labor organization.<sup>1</sup> Any injunction issued under Section 10(j) lasts until final disposition of the unfair labor practice case by the Board.<sup>2</sup>

In Fiscal 2005, the Board filed in district courts a total of 11 petitions for temporary injunctive relief under Section 10(j). Of these petitions, all were filed against employers. One case authorized in a prior fiscal year was also pending in district court at the beginning of the fiscal year. Of these cases, three were settled or adjusted prior to court action, and one case was withdrawn prior to a court decision due to changed circumstances. District courts granted injunctions in six cases and denied an injunction in one case. One case remained pending in district court at the end of the fiscal year.

Of the seven cases litigated in Fiscal 2005, one case that involved the protection of a union's organizational campaign resulted in the entry of an injunctive decree. In another case a Section 10(j) injunction was granted where an employer allegedly refused to meet and bargain in good faith with an incumbent union. Several cases this fiscal year involved an employer's engaging in conduct allegedly designed to undermine the status of an incumbent union, e.g., imposing more onerous working conditions upon unit employees after the union's recent certification, refusing to provide the union with access to its retail facilities consistent with past practice as well as the names, homes addresses, and telephone numbers of unit employees, engaging in bad faith or "surface" bargaining during negotiations, and discharging employees based upon their leading union activities. Finally, one case this year involved a successor employer's refusal to recognize and bargain with the incumbent union that had represented the employees of the predecessor employer.

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<sup>1</sup> See, e.g., *Ahearn v. Jackson Hospital Corp.*, 351 F.3d 226 (6th Cir. 2003), which was discussed in the Fiscal 2004 Annual Report; *Bloedorn v. Francisco Foods, Inc.*, 276 F.3d 270 (7th Cir. 2001).

<sup>2</sup> See generally *Kinney v. Federal Security, Inc.*, 272 F.3d 924 (7th Cir. 2001).

*Overstreet v. El Paso Electric Co.*,<sup>3</sup> involved an employer's alleged efforts to undermine the status of a newly certified union. The district court found "reasonable cause to believe" that, before the Board election that the union won, the employer, inter alia, threatened employees with discharge for union activities and discriminatorily discharged a union activist. After the election, the employer implemented more onerous work rules upon unit employees without bargaining with the newly certified union and imposed a written warning on a union supporter for an alleged work rule infraction. As a result of these alleged violations, employee attendance at union meetings was poor, employees indicated a fear of attending union meetings, and the union was unable to build a union negotiating committee with unit employees. The court concluded that most of the Regional Director's requested relief was just and proper to prevent irreparable harm and to maintain the lawful status quo, including an affirmative bargaining order in favor of the union and rescission of the new onerous work rules and the written warning to the union supporter. The court, however, disagreed with the Board that interim reinstatement of the discharged union activist pending a final Board adjudication was just and proper. In the court's view, it was not clear that the fear among the unit employees was attributable to the discharge, as opposed to being the product of a union representative opinion regarding the reason for the termination. The court also relied on the 7-month delay in filing the Section 10(j) petition as casting doubt on the need for interim reinstatement. The Board has appealed the denial of this relief, which was pending before the circuit court of appeals at the close of the fiscal year.

In *Mattina v. Duane Reade, Inc.*,<sup>4</sup> the employer allegedly attempted to undermine the status of a long-term incumbent union after employees at its retail stores voted to affiliate with a larger union. After the union merger, the employer refused to recognize or bargain with the newly affiliated union. The employer also imposed more restrictive store access rules to limit the union's ability to communicate with the unit employees than had existed under the parties' expired collective-bargaining agreement. The employer also refused the union's request for the names, home addresses, and telephone numbers of the unit employees. The district court concluded that the Regional Director had met the "reasonable cause" standard and that injunctive relief was warranted. The court concluded that the employer's restriction on union

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<sup>3</sup> Civil No. EP-05-CA-61(KC) (W.D. Tex. El Paso Division June 7, 2005), appeal pending (5th Cir.).

<sup>4</sup> 2005 WL 1349855, 177 LRRM 2803 (S.D.N.Y. June 8, 2005), appeal pending No. 05-4205 (2d Cir.).

access to its stores and refusal to provide the requested information impaired the union's "primary mode of communication" with its members and decreased the union's visibility among the employees. In the court's view, employees may have lost confidence in the union's ability to represent them because of high employee turnover in the unit and lack of access to the union. The court issued an injunction granting union access to the stores and ordered the employer to supply the union with the requested information about unit employees. However, the court denied the Board's request for an interim bargaining order in favor of the union. The court found that, because of the 2 years' lapse of time since the union affiliation vote and the amount of employee turnover, it could not conclude that a majority of the current employees wished the affiliated union to bargain on their behalf. The Board's appeal of this part of the decision was pending before the circuit court of appeals at the close of the fiscal year.

In *Blyer v. Dish Network Service Corp.*,<sup>5</sup> the Regional Director alleged that, during collective bargaining for their first contract, the employer had failed to bargain in good faith with the newly certified union, engaged in direct dealing with unit employees in an effort to foster the filing of a decertification petition against the union, and discharged the union steward because of his union activities. The Regional Director argued that injunctive relief was just and proper because employees had lost confidence in the union, noting that fewer employees conferred with union agents outside the facility and employee attendance at union meetings had decreased significantly since the discharge of the union steward. The district court concluded that there was reasonable cause to believe that the employer had committed the alleged violations and that injunctive relief was just and proper to preserve the status quo pending a final Board decision. The court agreed with the Regional Director that the discharge of the union steward may affect other employees' confidence in the Union.<sup>6</sup> The court also rejected the employer's claims that the Board delayed in filing the Section 10(j) petition and that the employer was still meeting and bargaining with the union.<sup>7</sup>

Finally, *Marsh v. Hancock Lumber, LLC*,<sup>8</sup> involved a successor employer who reached a pre-recognition agreement with the incumbent union that delayed the union's right to claim representational status in the

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<sup>5</sup> 2:05-cv-00725-LDW-JO (E.D.N.Y. August 18, 2005).

<sup>6</sup> *Id.*, slip op. at 8.

<sup>7</sup> *Id.*

<sup>8</sup> No. 1:05-MC-67 (N.D.N.Y. September 9, 2005).

bargaining unit until 8 months after the date on which regular production began.<sup>9</sup> The Regional Director alleged that the employer refused to recognize the union after the 8-month grace period expired, threatened to close the facility, and attempted to coerce employees into decertifying the union. The district court found that the union's request for recognition was made after the end of the parties' agreed-upon 8-month grace period and thus was not premature. The court concluded that there was reasonable cause to believe that the employer was obligated to recognize and bargain with the union. The court also found that the employer's refusal to recognize the union was so serious that temporary injunctive relief was just and proper.<sup>10</sup> The court granted an interim affirmative bargaining order in favor of the union.

### **B. Injunction Litigation Under Section 10(1)**

Section 10(1) imposes a mandatory duty on the Board to petition for "appropriate injunctive relief" against a labor organization or its agent charged with a violation of Section 8(b)(4)(A), (B), and (C),<sup>11</sup> or Section 8(b)(7),<sup>12</sup> and against an employer or union charged with a violation of Section 8(e),<sup>13</sup> whenever the General Counsel's investigation reveals "reasonable cause to believe that such charge is true and a complaint should issue."<sup>14</sup> In cases arising under Section 8(b)(7), however, a district court injunction may not be sought if a charge under Section 8(a)(2) of the Act has been filed alleging that the employer had dominated or interfered with the formation or administration of a labor organization and, after investigation, there is "reasonable cause to believe such charge is true and that a complaint should issue." Section 10(1) also provides that its provisions shall be applicable, "where such relief is appropriate," to threats or other coercive conduct in support of

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<sup>9</sup> Id., slip op. at 3.

<sup>10</sup> See slip op. at 6.

<sup>11</sup> Section 8(b)(4)(A), (B), and (C), as enacted by the Labor Management Relations Act of 1947, prohibited certain types of secondary strikes and boycotts, strikes to compel employers or self-employed persons to join labor or employer organizations, and strikes against Board certifications of bargaining representatives. These provisions were enlarged by the 1959 amendments of the Act (Title VII of Labor-Management Reporting and Disclosure Act) to prohibit not only strikes and the inducement of work stoppages for these objects but also to proscribe threats, coercion, and restraint addressed to employers for these objects, and to prohibit conduct of this nature where an object was to compel an employer to enter into a "hot cargo" agreement declared unlawful in another section of the Act, Section 8(e).

<sup>12</sup> Section 8(b)(7), incorporated in the Act by the 1959 amendments, makes organizational or recognitional picketing under certain circumstances an unfair labor practice.

<sup>13</sup> Section 8(e), also incorporated in the Act by the 1959 amendments, makes hot cargo agreements unlawful and unenforceable, with certain exceptions for the construction and garment industries.

<sup>14</sup> See generally *Pye v. Teamsters Local Union No. 122*, 61 F.3d 1013 (1st Cir. 1995); *Kinney v. International Union of Operating Engineers, Local 150*, 994 F.2d 1271 (7th Cir. 1993).

jurisdictional disputes under Section 8(b)(4)(D) of the Act.<sup>15</sup> In addition, under Section 10(l) a temporary restraining order pending the hearing on the petition for an injunction may be obtained, without notice to the employer, upon a showing that “substantial and irreparable injury to the charging party will be unavoidable” unless immediate injunctive relief is granted. Such ex parte relief, however, may not extend beyond 5 days.

In this report period, the Board filed four petitions for injunctions under Section 10(l). Of the total caseload, comprised of this number together with the one case pending at the beginning of the period, one case settled and one case was dismissed. During this period, four petitions went to final order, the courts granting injunctions in three cases and denying them in one case. The three injunctions granted involved secondary boycott action proscribed by Section 8(b)(4)(B). The sole case in which injunctive relief was denied also involved alleged secondary boycott activity.

During this fiscal year, appellate courts issued decisions in two Section 10(l) cases that involved alleged secondary boycott activity by labor organizations. In *Overstreet v. Carpenters Local 1506*,<sup>16</sup> the Ninth Circuit affirmed the denial of a Section 10(l) injunction to enjoin the unions’ use of large banners near the neutral employers’ premises that stated in large letters “Shame on [neutral employer],” and “Labor dispute” in smaller letters in the corners of the banners. The Court overruled the previous “reasonable cause/just and proper” standard to be used in Section 10(l) proceedings, and adopted a four-part traditional equity standard. Applying that new standard, the Court rejected the General Counsel’s argument that the banners constituted coercion under Section 8(b)(4)(ii)(B) because it was tantamount to traditional or “signal” picketing and falsely misled consumers into believing the union had a primary labor dispute with the neutral employers.<sup>17</sup> Rather, the Court concluded that the banners were speech protected by the First Amendment, similar to handbills, and were truthful statements of the Unions’ dispute with secondary employers. Accordingly, the Court concluded that the Regional Director was not likely to succeed on the merits before the Board.

In *Kentov v. Sheet Metal Workers Local 15*,<sup>18</sup> a case that involved a union’s mock funeral procession staged near a neutral hospital’s

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<sup>15</sup> Section 8(b)(4)(D) was enacted as part of the Labor Management Relations Act of 1947.

<sup>16</sup> 409 F.3d 1199 (9th Cir. 2005), affg. Civil No. 03-0773 J (JFS) (S.D. Ca. May 7, 2003). The district court decision in *Overstreet* was discussed in the Fiscal 2003 Annual Report.

<sup>17</sup> Id.

<sup>18</sup> 418 F.3d 1259 (11th Cir. 2005), affg. Civil No. 8:04-CV-1730-T-27TBM (M.D. Fla. August 9, 2004). The district court decision in *Kentov* was described in the Fiscal 2004 Annual Report.

entrance, the Eleventh Circuit affirmed the district court's issuance of a Section 10(l) injunction. The funeral procession consisted of four union representatives carrying a large object resembling a coffin back and forth on a sidewalk that crosses the hospital's main entrance, accompanied by a fifth representative wearing a grim reaper costume. The district court found reasonable cause to believe that the union's mock funeral procession, in connection with its dispute involving primary construction employers employed by the neutral hospital, coerced the hospital and its patients and visitors in violation of Section 8(b)(4)(ii)(B). The Eleventh Circuit agreed with the district court's reasoning and concluded that, although the union members did not carry traditional picket signs or block ingress or egress to the hospital during the procession, its activity involved patrolling and was, therefore, a "mixture of conduct and communication" intended to "provide the most persuasive deterrent to third persons about to enter" the hospital.<sup>19</sup>

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<sup>19</sup> 418 F.3d at 1265–1266.

## VIII

### **Contempt Litigation and Compliance Branch**

During fiscal year 2005, the Contempt Litigation and Compliance Branch (CLCB) continued its role as a full service office, combining advice, training, and assistance to Regions with Federal court litigation, including contempt, actions under the Federal Debt Collection Procedures Act (FDCPA) and bankruptcy actions. A total of 355 cases were referred to CLCB during the fiscal year for advice and/or assistance, or for consideration of contempt proceedings or other appropriate action to achieve compliance with the Act. Of this total, 139 cases were formal submissions respecting contempt or other compliance actions; in 216 other cases, advice and/or assistance was solicited and provided to the Regions or other Agency personnel and the cases returned for further administrative processing. CLCB also conducted 153 asset/entity database investigations to assist Regions in their compliance efforts, a task over and above the 355 referrals to CLCB referenced above. In addition, nearly 480 hours were devoted to training Regional and other Agency personnel and members of the private sector bar on contempt and compliance issues.

Of the 139 contempt or other formal submissions, voluntary compliance was achieved in 27 cases during the fiscal year, without the necessity of filing a contempt petition or other initiating papers, and 22 other cases settled after the filing of a formal pleading in court but before trial. In 50 other cases, it was determined that contempt or other proceedings were not warranted.

In cases deemed to have merit, 15 civil contempt or equivalent proceedings were instituted, including 2 in which body attachment was sought. A number of ancillary compliance proceedings were also instituted by CLCB in FY 2005, including four proceedings to obtain postjudgment writs of garnishment under FDCPA and three motions for disposition orders for funds previously garnished. CLCB instituted four proceedings in bankruptcy courts, including one objection to a free and clear sale and three miscellaneous matters. Finally, CLCB instituted seven subpoena enforcement actions in District Courts.

Seventeen civil contempt or equivalent adjudications were awarded in favor of the Board in FY 2005, including one assessing fines previously imposed prospectively and two issuing writs of body attachment. During FY 2005, CLCB also successfully obtained one protective restraining order and one order denying Respondent's motion for a protective order; 9 post-judgment writs of garnishment; 3 turnover orders for garnished

funds; 4 Board orders denying respondents' motions to revoke subpoenas; and 10 subpoena enforcement orders from District Courts.

During the fiscal year, CLCB collected \$26,000 in fines and \$9, 219,219 in backpay or other compensatory damages, while recouping \$8,400 in court costs and attorneys' fees incurred in contempt litigation.

Several noteworthy cases were handled during the fiscal year. In *In re Kaiser Aluminum Corp.*<sup>1</sup> (Bankr. D. Del.), the Board was faced with the need to expeditiously calculate backpay resulting from an unlawful lockout of approximately 2875 individuals, over a 20-month period. Utilizing traditional approaches (calculating backpay by subtracting from each discriminatees' gross backpay the amount of interim earnings received by the discriminatee during the backpay period) would have required the expenditure of an enormous amount of the Agency's human and financial resources to compute backpay. Instead, the CLCB, in consultation with the Region, hired a professional statistician to estimate the interim earnings of the discriminatees. Based upon the statistician's estimate, we were able, working in conjunction with the Special Litigation Branch, to negotiate a settlement, agreed to by both the Respondent and the creditors' committee, and approved by the Bankruptcy Court, recognizing the Board's backpay claim in the amount of \$175 million.

*Local 3 IBEW*<sup>2</sup> is a significant contempt case which was litigated during the fiscal year. On April 7, May 3, July 25, and August 1, 2005, following an evidentiary hearing, the Special Master issued reports finding that Local 3 had violated a June 1983 judgment and July 1996 Consent order issued by the United States Court of Appeals for the Second Circuit by engaging in unlawful secondary boycott activity at two jobsites, and by failing to take prescribed steps to assure lawful picketing.

In view of Local 3's history of disregard for Board and Court orders, and its conduct in this case, the Master recommended stern remedial measures. He recommended that an order be entered adjudging Local 3 in civil contempt ; that a fine of \$33,250 be assessed against Local 3 for violating the June 1983 judgment and the July 1996 Consent Order, the latter of which contained a prospective fine provision; that the prospective fine against Local 3 be increased to \$25,000 per violation and \$5,000 per day; that prospective fines be imposed against individuals who, with notice and knowledge of the Court's orders, violates those orders; that Local 3 be ordered to pay \$218,366.53 in attorneys fees and

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<sup>1</sup> Board Case 32-CA-17041

<sup>2</sup> Board Cases 29-CC-1425, -1431, -1457, 2<sup>nd</sup> Cir. No. 04-5912-ag

costs to the Board (calculated at the prevailing private practice market rate); that Local 3 be required to post, mail, and publish notices; that Local 3 be ordered to take certain steps to assure that its future picketing will be lawful; and that Local 3 be required to submit a reimbursable fine of \$50,000 into the registry of the Court to be remitted upon the completion of certain steps in compliance. The case is pending before the Second Circuit on appeal.

Finally, CLCB fought a significant subpoena enforcement battle during the fiscal year. In *Cooper Tire & Rubber Co.*,<sup>3</sup> CLCB subpoenaed documents from Cooper Tire in connection with an investigation as to whether Cooper violated a Fifth Circuit judgment. Cooper refused to turn over the documents and filed a petition to revoke the subpoena with the Board, which was denied. When Cooper continued to refuse to produce one of the subpoenaed items—a videotape shown to employees during an organizational campaign—CLCB filed an application with the District Court in D.C. to enforce the subpoena. On September 2, 2005, the District Court, affirming the decision of a Magistrate Judge, granted the Board’s application for subpoena enforcement. The District Court rejected a number of legal defenses raised by Cooper, including claims that the District Court lacked subject matter jurisdiction; that a change of venue to Mississippi should have been granted; and that the subject matter of the video was not shown to be reasonably connected to the terms of the Fifth Circuit judgment. The case is pending before the D.C. Circuit on appeal.

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<sup>3</sup> Board Cases 26–RC–8338, 26–CA–20773–1, D.C. Cir. No. 04-5418



## IX

### Special Litigation

The Board participates in a number of cases that fall outside the normal process of statutory enforcement and review. The following represent the most significant cases decided this year:

#### A. Litigation Under Section 10(k) of the Act

In *Recon Refractory & Construction Inc. v. NLRB*,<sup>1</sup> the Ninth Circuit denied Recon's petition for review of the Board's decision to quash notice of hearing under Section 10(k) of the Act, 29 U.S.C. § 160(k). Recon, a refractory installation company, signed a National Refractory Agreement (NRA) with the International Union of Bricklayers & Allied Craftworkers, Local 4 (Bricklayers). Pursuant to this collective-bargaining agreement Recon agreed exclusively to use Bricklayers members for all of its refractory work. Although Recon followed the NRA for a decade, Bricklayers learned in early 2000 that Recon had performed nonbrick refractory installation work through another union, the Industrial, Professional and Technical Workers International Union (IPTW). In late 2000, unfair labor practice charges were filed, claiming that IPTW violated Section 8(b)(4)(D) of the Act, 29 U.S.C. § 158(b)(4)(D), by engaging in proscribed activities with the intention of forcing Recon to assign certain work to IPTW employees, rather than to Bricklayers employees. After an 18-day hearing, a Board hearing officer transferred the case directly to the Board for decision. In its decision, the Board granted the Bricklayers' motion to quash notice of hearing on the basis that this was not a jurisdictional dispute appropriate for resolution under Section 10(k), but was instead "a true work preservation dispute."<sup>2</sup>

On review, the Board noted in its brief to the Court its view that under the law of other circuits, a Board order quashing a notice of hearing in a Section 10(k) proceeding is not a final, reviewable order under the NLRA. The Board further noted, however, that it recognized controlling Ninth Circuit law to the contrary, and therefore defended its underlying decision on the merits. In upholding the Board's order, the Ninth Circuit noted that Section 10(k) was enacted to "protect employers trapped between two competing unions,"<sup>3</sup> and not to cause the Board to resolve disputes purely between a union and an employer. The court found that Recon had intentionally created the conflict at issue in an attempt to

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<sup>1</sup> 424 F.3d 980 (9th Cir. 2005).

<sup>2</sup> *Industrial Professional & Technical Workers International Union*, 339 NLRB 825, 828 (2003).

<sup>3</sup> 424 F.3d at 988, quoting *USPC-Wesco, Inc. v. NLRB*, 827 F.2d 581, 584 (9th Cir. 1987).

lower wages and avoid its obligations pursuant to the Bricklayers contract. In this context, the court concluded, employers should not be permitted to use Section 10(k) in an attempt to avoid their contractual obligations with their employees. Because Recon had created the dispute at issue by its own actions, the court held that a Section 10(k) hearing was inappropriate.

### **B. Litigation Under the Equal Access to Justice Act**

In *NLRB v. Gordon*,<sup>4</sup> the District of Colorado Bankruptcy Court denied the Chapter 7 debtor's motion for attorneys' fees and expenses under the Equal Access to Justice Act (EAJA), 28 U.S.C. §2412. Previously, as a result of lengthy unfair labor practice proceedings involving the debtor Robert Gordon and three entities he controlled, the Board had obtained a judgment against Gordon in the amount of \$821,594.<sup>5</sup> The Board then brought an adversary proceeding in bankruptcy court to except this judgment from the debtor's Chapter 7 discharge, pursuant to Section 523(a)(6) of the Bankruptcy Code.<sup>6</sup> As a result of the bankruptcy court's preliminary rulings, the Board subsequently concluded that it would not effectuate the purposes of the Act to proceed with the litigation. When the Board then withdrew its adversary complaint, Gordon filed an application for attorneys' fees and expenses. In denying the EAJA award, the court held that the Debtor was not a prevailing party under the Supreme Court's decision in *Buckhannon Board and Care Home, Inc. v. West Virginia Department of Health and Human Resources*,<sup>7</sup> because the Board voluntarily withdrew its adversary complaint before the court made a final determination on the merits of the case. The court further held that the Board was substantially justified in its position. The court reasoned that the Board reasonably relied on factual determinations established in the unfair labor practice proceedings, and further reasonably relied on decisions of other courts where unfair labor practice findings were found to have preclusively established the necessary elements for an exception to discharge under Section 523(a)(6). The court accordingly determined that Gordon was not entitled to an EAJA award.

### **C. Preemption Litigation**

In *Metropolitan Milwaukee Association of Commerce v. Milwaukee County*,<sup>8</sup> an association of area businesses challenged as preempted by

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<sup>4</sup> No. 03-1330 (Bankr. D. Colo. May 26, 2005) (unpublished).

<sup>5</sup> See *NLRB v. Gordon*, 303 B.R. 645, 648-649, 660 (Bankr. D. Colo. 2003).

<sup>6</sup> 11 U.S.C. §523(a)(6).

<sup>7</sup> 532 U.S. 598, 603 (2001).

<sup>8</sup> 359 F. Supp.2d 749 (E.D. Wis. 2005), appeal pending (7th Cir. No. 05-1531).

the NLRA a Milwaukee County ordinance requiring certain County contractors to sign labor peace agreements with unions. The County ordinance required certain County contractors to enter into a labor peace agreement with a union that requested an agreement and that was seeking to organize the contractor's employees. The ordinance required the labor peace agreement to provide that: (1) the contractor will not "express to employees false or misleading information that is intended to influence the determination of employee preference regarding union representation;" (2) the union will not "misrepresent to employees the facts and circumstances regarding their employment;" (3) the contractor will provide to the union a "list of the names, addresses and phone numbers of the employees" who are eligible for representation; (4) the contractor will give the union reasonable "access to the workplace for the purpose of providing employees with information about the [union];" (5) disputes arising under the agreement will be arbitrated; and (6) the union will not engage in economic action against the employer, such as strikes, picketing or boycotting.<sup>9</sup> The ordinance also required that the agreement include procedures for preventing the parties from coercing employees in selecting or not selecting a bargaining representative and prohibiting them from requiring employees to "attend a meeting or event that is intended to influence [their] decision in selecting or not selecting a bargaining representative."<sup>10</sup> Finally, the ordinance authorized the County to terminate contracts with contractors who refuse to sign an agreement or who are found by an arbitrator to have violated one.

The Board filed a brief as amicus curiae arguing that the ordinance is preempted by the NLRA because it conditions a private employer's receipt of contracts with the County upon the relinquishment of federal rights guaranteed by the Act. However, the United States District Court for the Eastern District of Wisconsin disagreed and granted summary judgment for the County. The district court held that the ordinance is not preempted by the Act because it is not regulatory, but rather serves the County's proprietary goals under the Supreme Court's decision in *Building and Construction Trades Council v. Associated Builders and Contractors*.<sup>11</sup> The district court relied on *HERE, Local 57 v. Sage Hospitality Resources, LLC*,<sup>12</sup> a Third Circuit case holding that governmental action is proprietary if: (1) it serves to advance or preserve the government's proprietary interest in a project or transaction, as an investor, owner or financier, and (2) the scope of the funding condition is

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<sup>9</sup> Id. at 753.

<sup>10</sup> Id.

<sup>11</sup> 507 U.S. 218 (1993).

<sup>12</sup> 390 F.3d 206 (3d Cir. 2004).

“specifically tailored” to the proprietary interest. Applying this test to the Milwaukee County ordinance, the district court held that the County has a proprietary interest in ensuring that the delivery of County-funded services is not interrupted as the result of union organizing, and that the ordinance is specifically tailored to serve this proprietary goal. An appeal is pending in the Seventh Circuit.

In *Chamber of Commerce v. Lockyer (Lockyer II)*,<sup>13</sup> a split panel of the Ninth Circuit issued a decision on rehearing, affirming the district court’s holding that the NLRA preempts a California neutrality statute (Judge Beezer and District Judge England sitting by designation, Judge Fisher dissenting).<sup>14</sup> Initially, the panel majority (the court) determined that “Section 8(c) of the National Labor Relations Act . . . explicitly protects the right of employers to express their views about unions and union organizing efforts.”<sup>15</sup> The court reasoned that the Act’s “comprehensive scheme protects non-coercive employer speech, because it is fundamental in allowing fair and free representation elections.”<sup>16</sup> The court further concluded that *Garmon*<sup>17</sup> preemption and *Machinists*<sup>18</sup> preemption “each completely preempts the provisions of the California statute.”<sup>19</sup> The court held that *Garmon* preemption applies because the California statute “regulate[s] conduct so plainly within the central aim of federal regulation [that it] involves too great a danger of conflict between power asserted by Congress and requirements imposed by state law,” thus creating a “potential frustration of national purposes.”<sup>20</sup> In holding that the California statute was also preempted under *Machinists*, the court determined that by “infringing the speech rights of employers, the statute substantively regulates and disrupts ‘Congress’ intentional balance between the uncontrolled power of management and labor to further their respective interests.”<sup>21</sup> The court also held that neither the market participant nor the local-interest exceptions to preemption applies.

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<sup>13</sup> 422 F.3d 973 (9th Cir. 2005) (*Lockyer II*), briefs filed at court’s request on October 23, 2005 regarding whether to grant rehearing en banc (Nos. 03–55166, 03–55169), modifying 364 F.3d 1154 (9th Cir. 2004) (*Lockyer I*).

<sup>14</sup> In the Ninth Circuit’s *Lockyer I* decision (364 F.3d 1154 (9th Cir. 2004)), the same panel had unanimously found that the sections of the California statute were preempted by the NLRA under *Machinists v. Wisconsin Employment Relations Commission*, 427 U.S. 132, 140 (1976).

<sup>15</sup> 422 F.3d at 982.

<sup>16</sup> 422 F.3d at 984.

<sup>17</sup> *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959).

<sup>18</sup> *Machinists v. Wisconsin Employment Relations Commission*, 427 U.S. 132, 140 (1976).

<sup>19</sup> 422 F.3d at 985.

<sup>20</sup> 422 F.3d at 988 (quoting *Garmon*, 359 U.S. at 244).

<sup>21</sup> 422 F.3d at 989 (quoting *Building and Construction Trades Council v. Assoc. Builders and Contractors*, 507 U.S. 218, 226 (1993)).

The court rejected an argument advanced by the AFL–CIO that the court should sever and consider preempting the penalty and enforcement provisions, but leave the core spending prohibition of the statute intact. The court also rejected California’s and the AFL–CIO’s remaining arguments that preemption should not apply because the AFL–CIO cast the challenge to the statute as a facial challenge, rather than as-applied, as well as their reliance on First Amendment doctrines and permissible limitations on federal grant programs that are similar to those at issue in California.

In dissent, Judge Fisher explained his view that the California statute is not preempted under *Garmon* because “the NLRA does not ‘actually protect’ employer speech,”<sup>22</sup> and the state statute “is not wholly preempted under *Machinists*.”<sup>23</sup> In Judge Fisher’s view, the core spending restriction should survive preemption, but the penalty and private enforcement provisions should be found preempted under *Machinists*.

#### **D. Litigation Alleging Agency Misconduct**

In *Lewis et al. v. Atlantic Resort Development and NLRB*,<sup>24</sup> the United States District Court for the District of Massachusetts granted in full the Board’s motion to dismiss all claims against it, and granted in part co-defendant Atlantic Resort Development’s (ARD) motion to dismiss. Pro se plaintiffs had filed in Massachusetts state court a complaint against the Board and ARD alleging 50 separate causes of action, which the Board removed to federal court. The complaint contained allegations of fraud and government corruption, among others, arising out of a Board Region’s investigation of unfair labor practice charges against ARD, and the General Counsel’s decision not to issue complaint on two of the charges, and to issue complaint and settle the remaining charge. The plaintiffs’ complaint sought against each of the defendants compensatory damages of \$344,160, and punitive damages of \$10,000,000.

The district court agreed with a magistrate judge’s recommendation to find preempted many of the plaintiffs’ claims against ARD, such as their claims for lost wages and unfair labor practices. The district court further found that the remaining federal claims in the plaintiffs’ complaint, including all claims against the Board, failed to state a claim upon which relief could be granted, because they sought to review the

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<sup>22</sup> 422 F.3d at 996.

<sup>23</sup> 422 F.3d at 1000.

<sup>24</sup> No. 03–11786–MLW (D. Mass. March 1, 2005) (unpublished), appeal pending (1st Cir. No. 05–2351).

General Counsel's exercise of prosecutorial discretion in investigating, dismissing, and settling unfair labor practice charges. The court remanded plaintiffs' remaining state law claims against ARD to the state court. Finally, the district court denied as futile the plaintiffs' motion to amend their complaint, concluding that the plaintiffs were seeking to reassert their same federal claims. An appeal by plaintiffs is pending in the First Circuit.

### **E. Litigation Under the Bankruptcy Code**

In *In re Grosvenor Orlando Associates*,<sup>25</sup> the United States Bankruptcy Court for the Middle District of Florida rejected efforts by HERE Local 55 and several unlawfully discharged employees to assert claims in bankruptcy that would have undermined the Board's primacy in effectuating its own remedies against bankrupt charged parties. As previously found by the Board and affirmed by the Eleventh Circuit on review, the employer violated Section 8(a)(3) of the Act when it permanently replaced 44 unfair labor practice strikers.<sup>26</sup> While the Board case was in the compliance stage, the employer filed a Chapter 11 bankruptcy petition. The Board then filed a proof of claim that estimated the employer's total liability for backpay owed to the 44 discriminatees. The Union and the discharged employees disputed the Board's calculations and filed their own proofs of claim for the same backpay. The employer objected to those claims as duplicative of the Board's claim and moved for summary judgment, questioning whether the Union and the employees had standing to assert their own claims. The Union and the employees responded that the employees, rather than the Board, were the true parties in interest and that their claims were not duplicative because they sought more backpay than the Board had claimed. The Board filed a statement supporting the employer's arguments. Resolving these questions in the employer's favor, the bankruptcy court followed longstanding Supreme Court precedent holding that the Board has the exclusive authority to enforce the Act and its own orders, even against those in bankruptcy. Specifically, the court relied on *Amalgamated Utility Workers v. Consolidated Edison Co.*,<sup>27</sup> which recognized that Congress granted the Board sole authority to initiate proceedings and enforce remedial orders under the Act. The bankruptcy court found further support in *Nathanson v. NLRB*,<sup>28</sup> which held that the Board, as statutory agent for charging parties, is the proper claimant for backpay

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<sup>25</sup> No. 04-1085 (Bankr. M.D. Fla.).

<sup>26</sup> 336 NLRB 613 (2001), enf'd, No. 01-16108 (11th Cir. Oct. 9, 2002).

<sup>27</sup> 309 U.S. 261 (1940).

<sup>28</sup> 344 U.S. 25 (1952).

awards in bankruptcy proceedings. Applying these precedents to this case, the bankruptcy court concluded that the Union and the employees lacked standing to assert their claims, which arose from the same conduct that was the subject of the Board case. Accordingly, the court held that the non-Board claims were duplicative and without legal basis, and it granted the employer's motion for summary judgment.



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## **APPENDIX**

### **GLOSSARY OF TERMS USED IN STATISTICAL TABLES**

The definitions of terms contained in this glossary are not intended for general application but are specifically directed toward increasing comprehension of the statistical tables that follow. Thus the definitions are keyed directly to the terms used in such tables.

#### **Adjusted Cases**

Cases are closed as “adjusted” when an informal settlement agreement is executed and compliance with its terms is secured. (See “Informal Agreement,” this glossary.) In some instances, a written agreement is not secured but appropriate remedial action is taken so as to render further proceeding unnecessary. A central element in an “adjusted” case is the agreement of the parties to settle differences without recourse to litigation.

#### **Advisory Opinion Cases**

See “Other Cases—AO” under “Types of Cases.”

#### **Agreement of Parties**

See “Informal Agreement” and “Formal Agreement,” this glossary. The term “agreement” includes both types.

#### **Amendment of Certification Cases**

See “Other Cases—AC” under “Types of Cases.”

#### **Backpay**

Amounts of money paid or to be paid employees as reimbursement for wages lost because they were discriminatorily discharged or unlawfully denied employment, plus interest on such money. Also included is payment for bonuses, vacations, other fringe benefits, etc., lost because of the discriminatory acts, as well as interest thereon. All moneys noted in table 4 have been reported as paid or owing in cases closed during the fiscal year. (Installment payments may protract some payments beyond this year and some payments may have actually been made at times considerably in advance of the date a case was closed; i.e., in a prior fiscal year.)

#### **Backpay Hearing**

A supplementary hearing to receive evidence and testimony as to the amount of backpay due discriminatees under a prior Board or court decree.

#### **Backpay Specification**

The formal document, a “pleading,” which is served on the parties when the Regional Director and the respondent are unable to agree as to the amounts of backpay due discriminatees pursuant to a Board order or court decree requiring payment of such backpay. It sets forth in detail the amount held by the Regional Director to be owing each discriminatee and the method of computation employed. The specification is accompanied by a notice of hearing setting a date for a backpay hearing.

**Case**

A “case” is the general term used in referring to a charge or petition filed with the Board. Each case is numbered and carries a letter designation indicating the type of case. See “Types of Cases.”

**Certification**

A certification of the results of an election is issued by the Regional Director or the Board. If a union has been designated as the exclusive bargaining representative by a majority of the employees, a certification of representative is issued. If no union has received a majority vote, a certification of results of election is issued.

**Challenges**

The parties to an NLRB election are entitled to challenge any voter. At the election site, the challenged ballots are segregated and not counted when other ballots are tallied. Most frequently, the tally of unchallenged ballots determines the election and the challenged ballots are insufficient in number to affect the results of the election. The challenges in such a case are never resolved, and the certification is based on the tally of (unchallenged) ballots.

When challenged ballots are determinative of the result, a determination as to whether or not they are to be counted rests with the Regional Director in the first instance, subject to possible appeal to the Board. Often, however, the “determinative” challenges are resolved informally by the parties by mutual agreement. No record is kept of nondeterminative challenges or determinative challenges which are resolved by agreement prior to issuance of the first tally of ballots.

**Charge**

A document filed by an employee, an employer, a union, or an individual alleging that an unfair labor practice has been committed. See “C Case” under “Types of Cases.”

**Complaint**

The document which initiates “formal” proceedings in an unfair labor practice case. It is issued by the Regional Director when he or she concludes on the basis of a completed investigation that any of the allegations contained in the charge have merit and adjustment or settlement has not been achieved by the parties. The complaint sets forth all allegations and information necessary to bring a case to hearing before an administrative law judge pursuant to due process of law. The complaint contains a notice of hearing, specifying the time and place of hearing.

**Election, Runoff**

An election conducted by the Regional Director after an initial election, having three or more choices on the ballot, has turned out to be inconclusive (none of the choices receiving a majority of the valid votes cast). The Regional Director conducts the runoff election between the choices on the original ballot which received the highest and the next highest number of votes.

**Election, Stipulated**

An election held by the Regional Director pursuant to an agreement signed by all the parties concerned. The agreement provides for the waiving of hearing and the

establishment of the appropriate unit by mutual consent. Postelection rulings are made by the Board.

### **Eligible Voters**

Employees within an appropriate bargaining unit who were employed as of a fixed date prior to an election, or are otherwise qualified to vote under the Board's eligibility rules.

### **Fees, Dues, and Fines**

The collection by a union or an employer of dues, fines, and referral fees from employees may be found to be an unfair labor practice under Section 8(b)(1)(A) or (2) or 8(a)(1) and (2) or (3), where, for instance such moneys were collected pursuant to an illegal hiring hall arrangement, or an invalid or unlawfully applied union-security agreement; where dues were deducted from employees' pay without their authorization; or, in the cases of fines, where such fines restrained or coerced employees in the exercise of their rights. The remedy for such unfair labor practices usually requires the reimbursement of such moneys to the employees.

### **Fines**

See "Fees, Dues, and Fines."

### **Formal Action**

Formal actions may be documents issued or proceedings conducted when the voluntary agreement of all parties regarding the disposition of all issues in a case cannot be obtained, and where dismissal of the charge or petition is not warranted. Formal actions, are, further, those in which the decision-making authority of the Board (the Regional Director in representation cases), as provided in Sections 9 and 10 of the Act, must be exercised in order to achieve the disposition of a case or the resolution of any issue raised in a case. Thus, formal action takes place when a Board decision and consent order is issued pursuant to a stipulation, even though the stipulation constitutes a voluntary agreement.

### **Formal Agreement (in unfair labor practice cases)**

A written agreement between the Board and the other parties to a case in which hearing is waived and the specific terms of a Board order agreed upon. The agreement may also provide for the entry of a consent court decree enforcing the Board order.

### **Compliance**

The carrying out of remedial action as agreed upon by the parties in writing (see "Formal Agreement," "Informal Agreement"); as recommended by the administrative law judge in the decision; as ordered by the Board in its decision and order; or decreed by the court.

### **Dismissed Cases**

Cases may be dismissed at any stage. They are dismissed informally when, following investigation, the Regional Director concludes that there has been no violation of the law, that there is insufficient evidence to support further action, or for a variety of other reasons. Before the charge is dismissed, however, the charging party is given the opportunity to withdraw the charge by the administrative law judge, by the Board, or by the courts through their refusal to enforce orders of the Board.

## **Dues**

See “Fees, Dues, and Fines.”

## **Election, Consent**

An election conducted by the Regional Director pursuant to an agreement signed by all parties concerned. The agreement provides for the waiving of a hearing, the establishment of the appropriate unit by mutual consent, and the final determination of all postelection issues by the Regional Director.

## **Election, Directed**

### **Board-Directed**

An election conducted by the Regional Director pursuant to a decision and direction of election by the Board. Postelection rulings are made by the Regional Director or by the Board.

### **Regional Director-Directed**

An election conducted by the Regional Director pursuant to a decision and direction of election issued by the Regional Director after a hearing. Postelection rulings are made by the Regional Director or by the Board.

## **Election, Expedited**

An election conducted by the Regional Director pursuant to a petition filed within 30 days of the commencement of picketing in a situation in which a meritorious 8(b)(7)(C) charge has been filed. The election is conducted under priority conditions and without a hearing unless the Regional Director believes the proceeding raises questions which cannot be decided without a hearing.

Postelection rulings on objections and/or challenges are made by the Regional Director and are final and binding unless the Board grants an appeal on application by one of the parties.

## **Election, Rerun**

An election held after an initial election has been set aside either by the Regional Director or by the Board.

## **Informal Agreement (in unfair labor practice cases)**

A written agreement entered into between the party charged with committing an unfair labor practice, the Regional Director, and (in most cases) the charging party requiring the charged party to take certain specific remedial action as a basis for the closing of the case. Cases closed in this manner are included in “adjusted” cases.

## **Injunction Petitions**

Petitions filed by the Board with respective U.S. district courts for injunctive relief under Section 10(j) or Section 10(e) of the Act pending hearing and adjudication of unfair labor practice charges before the Board. Also, petitions filed with the U.S. court of appeals under Section 10(e) of the Act.

## **Jurisdictional Disputes**

Controversies between unions or groupings of employees as to which employees will perform specific work. Cases involving jurisdictional disputes are received by the Board through the filing of charges alleging a violation of Section 8(b)(4)(D). They are

initially processed under Section 10(k) of the Act which is concerned with the determination of the jurisdictional dispute itself rather than with a finding as to whether an unfair labor practice has been committed. Therefore, the failure of a party to comply with the Board's determination of dispute is the basis for the issuance of an unfair labor practice complaint and the processing of the case through usual unfair labor practice procedures.

**Objections**

Any party to an election may file objections alleging that either the conduct of the election or the conduct of a party to the election failed to meet the Board's standards. An election will be set aside if eligible employee-voters have not been given an adequate opportunity to cast their ballots, in secrecy and without hindrance from fear or other interference with the expression of their free choice.

**Petition**

See "Representation Cases." Also see "Other Cases—AC, UC, and UD" under "Types of Cases."

**Proceeding**

One or more cases included in a single litigated action. A "proceeding" may be a combination of C and R cases consolidated for the purpose of hearing.

**Representation Cases**

This term applies to cases bearing the alphabetical designations RC, RM, or RD. (See "R Cases" under "Types of Cases," this glossary, for specific definitions of these terms.) All three types of cases are included in the term "representation" which deals generally with the problem of which union, if any, shall represent employees in negotiations with their employer. The cases are initiated by the filing of a petition by a union, an employer, or a group of employees.

**Representation Election**

An election by secret ballot conducted by the Board among the employees in an appropriate collective-bargaining unit to determine whether the employees wish to be represented by a particular labor organization for purposes of collective bargaining. The tables herein reflect only final elections which result in the issuance of a certification of representative if a union is chosen, or a certification of results if the majority has voted for "no union."

**Situation**

One or more unfair labor practice cases involving the same factual situation. These cases are processed as a single unit of work. A situation may include one or more CA cases, a combination of CA and CB cases, or combination of other types of C cases. It does not include representation cases.

**Types of Cases**

General:

Letter designations are given to all cases depending upon the subsection of the Act allegedly violated or otherwise describing the general nature of each case. Each of the letter designations appearing below is descriptive of the case it is associated with.

## **C Cases (unfair labor practice cases)**

A case number which contains the first letter designation C, in combination with another letter, i.e., CA, CB, etc., indicates that it involves a charge that an unfair labor practice has been committed in violation of one or more subsections of Section 8.

CA:

A charge that an employer has committed unfair labor practices in violation of Section 8(a)(1), (2), (3), (4), or (5), or any combination thereof.

CB:

A charge that a labor organization has committed unfair labor practices in violation of Section 8(b)(1), (2), (3), (5), or (6), or any combination thereof.

CC:

A charge that a labor organization has committed unfair labor practices in violation of Section 8(b)(4)(i) and/or (A), (B), or (C), or any combination thereof.

CD:

A charge that a labor organization has committed an unfair labor practice in violation of Section 8(b)(4)(i) or (ii)(D). Preliminary actions under Section 10(k) for the determination of jurisdictional disputes are processed as CD cases. (See "Jurisdictional Disputes" in this glossary.)

CE:

A charge that either a labor organization or an employer, or both jointly, have committed an unfair labor practice in violation of Section 8(e).

CG:

A charge that a labor organization has committed unfair labor practices in violation of Section 8(g).

CP:

A charge that a labor organization has committed unfair labor practices in violation of Section 8(b)(7)(A), (B), or (C), or any combination thereof.

## **R Cases (representation cases)**

A case number which contains the first letter designation R, in combination with another letter, i.e., RC, RD, RM, indicates that it is a petition for investigation and determination of a question concerning representation of employees, filed under Section 9(c) of the Act.

RC:

A petition filed by a labor organization or an employee alleging that a question concerning representation has arisen and seeking an election for determination of a collective-bargaining representative.

RD:

A petition filed by employees alleging that the union previously certified or currently recognized by the employer as their collective-bargaining representative no longer represents a majority of the employees in the appropriate unit and seeking an election to determine this.

RM:

A petition filed by an employer alleging that a question concerning representation has arisen and seeking an election for the determination of a collective-bargaining representative.

## **Other Cases**

AC:

(Amendment of Certification cases): A petition filed by a labor organization or an employer for amendment of an existing certification to reflect changed circumstances, such as changes in the name or affiliation of the labor organization involved or in the name or location of the employer involved.

AO:

(Advisory Opinion cases): As distinguished from the other types of cases described above, which are filed in and processed by Regional Offices of the Board, AO or “advisory opinion” cases are filed directly with the Board in Washington and seek a determination as to whether the Board would or would not assert jurisdiction, in any given situation on the basis of its current standards over the party or parties to a proceeding pending before a state or territorial agency or a court. (See subpart H of the Board’s Rules and Regulations, Series 8, as amended.)

UC:

(Unit Clarification cases): A petition filed by a labor organization or an employer seeking a determination as to whether certain classification of employees should or should not be included within a presently existing bargaining unit.

UD:

(Union Deauthorization case): A petition filed by employees pursuant to Section 9(e)(1) requesting that the Board conduct a referendum to determine whether a union’s authority to enter into a union-shop contract should be rescinded.

## **UD Cases**

See “Other Cases—UD” under “Types of Cases.”

## **Unfair Labor Practice Cases**

See “C Cases” under “Types of Cases.”

## **Union Deauthorization Cases**

See “Other Cases—UD” under “Types of Cases.”

## **Union-Shop Agreement**

An agreement between an employer and a labor organization which requires membership in the union as a condition of employment on or after the 30th day following (1) the beginning of such employment or (2) the effective date of the agreement, whichever is the later.

## **Unit, Appropriate Bargaining**

A grouping of employees in a plant, firm, or industry recognized by the employer, agreed upon by the parties to a case, or designated by the Board or its Regional Director, as appropriate for the purposes of collective bargaining.

### **Valid Vote**

A secret ballot on which the choice of the voter is clearly shown.

### **Withdrawn Cases**

Cases are closed as “withdrawn” when the charging party or petitioner, for whatever reasons, requests withdrawal or the charge of the petition and such request is approved.

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**Editor's Note:** The information contained in the Annual Report tables is chiefly derived from the NLRB's case-tracking database. Notes have been inserted to identify minor inconsistencies between tables caused by differences in coding. Questions or comments about the Annual Report should be directed to the NLRB Division of Information, Washington, DC or to the Agency's web site at [www.nlr.gov](http://www.nlr.gov).

**Table 1.—Total Cases Received, Closed, and Pending, Fiscal Year 2005<sup>1</sup>**

	Total	Identification of filing party				
		AFL-CIO Unions	Other National Unions	Other local Unions	Individuals	Employers
	All Cases					
Pending October 1, 2004.....	*18,318	11,183	513	572	5,295	755
Received fiscal 2005.....	29,858	16,093	907	904	10,638	1,316
On docket fiscal 2005.....	48,176	27,276	1,420	1,476	15,933	2,071
Closed fiscal 2005.....	32,002	17,584	893	856	11,300	1,369
Pending September 30, 2005.....	16,174	9,692	527	620	4,633	702
	Unfair labor practice cases <sup>2</sup>					
Pending October 1, 2004.....	16,793	10,186	478	506	4,960	663
Received fiscal 2005.....	24,720	12,370	750	648	9,763	1,189
On docket fiscal 2005.....	41,513	22,556	1,228	1,154	14,723	1,852
Closed fiscal 2005.....	26,955	13,934	750	626	10,409	1,236
Pending September 30, 2005.....	14,558	8,622	478	528	4,314	616
	Representation cases <sup>3</sup>					
Pending October 1, 2004.....	1,375	947	35	60	272	61
Received fiscal 2005.....	4,882	3,624	152	240	764	102
On docket fiscal 2005.....	6,257	4,571	187	300	1,036	163
Closed fiscal 2005.....	4,787	3,551	142	213	773	108
Pending September 30, 2005.....	1,470	1,020	45	87	263	55
	Union-shop deauthorization cases					
Pending October 1, 2004.....	60	--	--	--	60	--
Received fiscal 2005.....	104	--	--	--	104	--
On docket fiscal 2005.....	164	--	--	--	164	--
Closed fiscal 2005.....	112	--	--	--	112	--
Pending September 30, 2005.....	52	--	--	--	52	--
	Amendment of certification cases					
Pending October 1, 2004.....	9	4	0	0	0	5
Received fiscal 2005.....	8	5	1	2	0	0
On docket fiscal 2005.....	17	9	1	2	0	5
Closed fiscal 2005.....	10	3	0	2	0	5
Pending September 30, 2005.....	7	6	1	0	0	0
	Unit clarification cases					
Pending October 1, 2004.....	81	46	0	6	3	26
Received fiscal 2005.....	144	94	4	14	7	25
On docket fiscal 2005.....	225	140	4	20	10	51
Closed fiscal 2005.....	138	96	1	15	6	20
Pending September 30, 2005.....	87	44	3	5	4	31

<sup>1</sup> See Glossary of terms for definitions. Advisory Opinion (AO) cases not included. See Table 22.

<sup>2</sup> See Table 1B for totals by types of cases.

<sup>3</sup> See Table 1A for totals by types of cases.

\* Totals for cases pending Oct. 1, 2005, differ from last year's annual report. Revised totals result from postreport adjustments to last year's "on docket" and/or "closed figures."

**Table 1A.—Unfair Labor Practice Cases Received, Closed, and Pending, Fiscal Year 2005<sup>1</sup>**

	Total	Identification of filing party				
		AFL-CIO Unions	Other National Unions	Other local Unions	Individuals	Employers
CA cases						
Pending October 1, 2004.....	*14,192	10,135	472	492	3,048	45
Received fiscal 2005.....	18,300	12,290	739	627	4,611	33
On docket fiscal 2005.....	32,492	22,425	1,211	1,119	7,659	78
Closed fiscal 2005.....	20,337	13,859	738	604	5,088	48
Pending September 30, 2005.....	12,155	8,566	473	515	2,571	30
CB Cases						
Pending October 1, 2004.....	2,279	42	5	13	1,894	325
Received fiscal 2005.....	5,812	57	9	13	5,120	613
On docket fiscal 2005.....	8,091	99	14	26	7,014	938
Closed fiscal 2005.....	6,022	54	10	15	5,289	654
Pending September 30, 2005.....	2,069	45	4	11	1,725	284
CC Cases						
Pending October 1, 2004.....	207	1	0	1	8	197
Received fiscal 2005.....	360	6	1	2	20	331
On docket fiscal 2005.....	567	7	1	3	28	528
Closed fiscal 2005.....	348	2	1	3	21	321
Pending September 30, 2005.....	219	5	0	0	7	207
CD Cases						
Pending October 1, 2004.....	60	6	0	0	1	53
Received fiscal 2005.....	104	12	0	3	4	85
On docket fiscal 2005.....	164	18	0	3	5	138
Closed fiscal 2005.....	106	14	0	1	2	89
Pending September 30, 2005.....	58	4	0	2	3	49
CE Cases						
Pending October 1, 2004.....	15	2	0	0	4	9
Received fiscal 2005.....	41	4	1	2	1	33
On docket fiscal 2005.....	56	6	1	2	5	42
Closed fiscal 2005.....	36	4	1	2	3	26
Pending September 30, 2005.....	20	2	0	0	2	16
CG Cases						
Pending October 1, 2004.....	11	0	0	0	1	10
Received fiscal 2005.....	32	0	0	0	0	32
On docket fiscal 2005.....	43	0	0	0	1	42
Closed fiscal 2005.....	34	0	0	0	0	34
Pending September 30, 2005.....	9	0	0	0	1	8
CP Cases						
Pending October 1, 2004.....	29	0	1	0	4	24
Received fiscal 2005.....	71	1	0	1	7	62
On docket fiscal 2005.....	100	1	1	1	11	86
Closed fiscal 2005.....	72	1	0	1	6	64
Pending September 30, 2005.....	28	0	1	0	5	22

<sup>1</sup> See Glossary of terms for definitions.

\* Totals for cases pending Oct. 1, 2005, differ from last year's annual report. Revised totals result from postreport adjustments to last year's "on docket" and/or "closed figures."

**Table 1B.—Representation Cases Received, Closed, and Pending, Fiscal Year 2005<sup>1</sup>**

	Total	Identification of filing party				
		AFL-CIO Unions	Other National Unions	Other local Unions	Individuals	Employers
		RC Cases				
Pending October 1, 2004.....	*1,042	946	35	60	1	--
Received fiscal 2005.....	4,014	3,621	151	239	3	--
On docket fiscal 2005.....	5,056	4,567	186	299	4	--
Closed fiscal 2005.....	3,904	3,548	141	212	3	--
Pending September 30, 2005.....	1,152	1,019	45	87	1	--
		RM Cases				
Pending October 1, 2004.....	61	--	--	--	--	61
Received fiscal 2005.....	102	--	--	--	--	102
On docket fiscal 2005.....	163	--	--	--	--	163
Closed fiscal 2005.....	108	--	--	--	--	108
Pending September 30, 2005.....	55	--	--	--	--	55
		RD Cases				
Pending October 1, 2004.....	272	1	0	0	271	--
Received fiscal 2005.....	766	3	1	1	761	--
On docket fiscal 2005.....	1,038	4	1	1	1,032	--
Closed fiscal 2005.....	775	3	1	1	770	--
Pending September 30, 2005.....	263	1	0	0	262	--

<sup>1</sup> See Glossary of terms for definitions.

\* Totals for cases pending Oct. 1, 2005, differ from last year's annual report. Revised totals result from postreport adjustments to last year's "on docket" and/or "closed figures."

**Table 2.—Types of Unfair Labor Practices Alleged, Fiscal Year 2005**

	Number of cases showing specific allegations	Percent of total cases
<b>Subsections of Sec. 8(a): Total cases.....</b>		
8(a)(1).....	18,304	100.0
8(a)(1)(2).....	2,727	14.9
8(a)(1)(3).....	148	0.8
8(a)(1)(4).....	5,868	32.1
8(a)(1)(5).....	131	0.7
8(a)(1)(2)(3).....	7,128	38.9
8(a)(1)(2)(4).....	106	0.6
8(a)(1)(2)(5).....	2	0
8(a)(1)(3)(4).....	84	0.5
8(a)(1)(3)(5).....	403	2.2
8(a)(1)(4)(5).....	1,472	8.0
8(a)(1)(2)(3)(4).....	35	0.2
8(a)(1)(2)(3)(5).....	8	0
8(a)(1)(2)(4)(5).....	74	0.4
8(a)(1)(3)(4)(5).....	2	0
8(a)(1)(2)(3)(4)(5).....	96	0.5
8(a)(1)(2)(3)(4)(5).....	20	0.1
<b>Recapitulation<sup>1</sup></b>		
8(a)(1).....	18,304	100.0
8(a)(2).....	444	2.4
8(a)(3).....	8,047	44.0
8(a)(4).....	697	3.8
8(a)(5).....	8,911	48.7
<b>B. Charges filed against unions under Sec. 8(b)</b>		
<b>Subsections of Sec. 8(b): Total cases.....</b>		
8(b)(1).....	6,349	100.0
8(b)(2).....	4,784	75.4
8(b)(3).....	56	0.9
8(b)(4).....	347	5.5
8(b)(5).....	464	7.3
8(b)(6).....	1	0
8(b)(7).....	2	0
8(b)(8).....	71	1.1

<sup>1</sup> A single case may include allegations of violations of more than one subsection of the Act. Therefore, the total of the various allegations is greater than the total number of cases

**Table 2.—Types of Unfair Labor Practices Alleged, Fiscal Year 2005—Continued**

8(b)(1)(2).....	508	8.0
8(b)(1)(3).....	83	1.3
8(b)(1)(5).....	1	0
8(b)(2)(3).....	2	0
8(b)(3)(6).....	1	0
8(b)(1)(2)(3).....	25	0.4
8(b)(1)(2)(5).....	2	0
8(b)(1)(3)(5).....	1	0
8(b)(1)(2)(3)(5).....	1	0

**Recapitulation<sup>1</sup>**

8(b)(1).....	5,405	85.1
8(b)(2).....	594	9.4
8(b)(3).....	460	7.2
8(b)(4).....	493	7.8
8(b)(5).....	6	0.1
8(b)(6).....	3	0
8(b)(7).....	74	1.2

**B1. Analysis of 8(b)(4)**

Total cases 8(b)(4).....	464	100.0
8(b)(4)(A).....	23	5.0
8(b)(4)(B).....	302	65.1
8(b)(4)(C).....	8	1.7
8(b)(4)(D).....	104	22.4
8(b)(4)(A)(B).....	22	4.7
8(b)(4)(B)(C).....	3	0.6
8(b)(4)(A)(B)(C).....	2	0.4

**Recapitulation**

8(b)(4)(A).....	47	10.1
8(b)(4)(B).....	329	70.9
8(b)(4)(C).....	13	2.8
8(b)(4)(D).....	104	22.4

**B2. Analysis of 8(b)(7)**

Total cases 8(b)(7).....	71	100.0
8(b)(7)(A).....	16	22.5

<sup>1</sup> A single case may include allegations of violations of more than one subsection of the Act. Therefore, the total of the various allegations is greater than the total number of cases

**Table 2.—Types of Unfair Labor Practices Alleged, Fiscal Year 2005—Continued**

8(b)(7)(B).....	4	5.6
8(b)(7)(C).....	48	67.6
8(b)(7)(A)(B).....	2	2.8
8(b)(7)(A)(C).....	1	1.4
Recapitulation <sup>1</sup>		
8(b)(7)(A).....	19	26.8
8(b)(7)(B).....	6	8.5
8(b)(7)(C).....	49	69.0
C. Charges filed under Sec. 8(e)		
Total cases 8(e).....	41	100.0
Against unions alone.....	26	63.4
Against employers alone.....	8	19.5
Against both.....	7	17.1
D. Charges filed Sec. 8(g)		
Total cases 8(g).....	32	100.0

<sup>1</sup> A single case may include allegations of violations of more than one subsection of the Act. Therefore, the total of the various allegations is greater than the total number of cases.

**Table 3A.-Formal Actions Taken in Unfair Labor Practice Cases, Fiscal Year 2005<sup>1</sup>**

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case											
		Total formal actions taken	CA	CB	CC	CD		CE	CG	CP	CA combined with CB	C combined with representation cases	Other C combinations
						Jurisdictional disputes	Unfair labor practices						
10(k) notices of hearings issued.....	22	15	--	--	--	15	--	--	--	--	--	--	--
Complaints issued.....	2,164	1,373	1,160	134	19	--	1	3	3	4	26	18	5
Backpay specifications issued.....	167	65	59	3	0	--	0	0	0	0	0	3	0
Hearings completed, total.....	699	269	213	21	5	0	1	2	0	0	11	14	2
Initial ULP hearings.....	625	247	192	20	5	0	1	2	0	0	11	14	2
Backpay hearings.....	11	7	6	1	0	0	0	0	0	0	0	0	0
Other hearings.....	63	15	15	0	0	0	0	0	0	0	0	0	0
Decisions by administrative law judges, total.....	668	270	219	17	7	0	1	2	0	0	7	15	2
Initial ULP decisions.....	623	249	198	17	7	0	1	2	0	0	7	15	2
Backpay decisions .....	12	7	7	0	0	0	0	0	0	0	0	0	0
Supplemental decisions .....	33	14	14	0	0	0	0	0	0	0	0	0	0
Decisions and orders by the Board, total.....	1025	485	403	26	7	8	1	3	0	4	7	23	3
Upon consent of parties: .....													
Initial decisions.....	118	40	26	2	3	0	0	0	0	4	3	1	1
Supplemental decisions.....	10	3	1	0	0	0	0	0	0	0	0	2	0
Adopting administrative law judges' decisions (no exceptions filed):.....													
Initial ULP decisions.....	157	84	67	10	1	0	1	0	0	0	1	3	1
Backpay decisions.....	15	7	7	0	0	0	0	0	0	0	0	0	0
Supplemental decisions.....	4	3	3	0	0	0	0	0	0	0	0	0	0
Contested:.....													
Initial ULP decisions.....	624	315	267	14	3	8	0	3	0	0	3	16	1

<sup>1</sup> See Glossary of terms for definitions.

**Table 3A.-Formal Actions Taken in Unfair Labor Practice Cases, Fiscal Year 2005<sup>1</sup>—Continued**

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case											
		Total formal actions taken	CA	CB	CC	CD		CE	CG	CP	CA combined with CB	C combined with representation cases	Other C combinations
						Jurisdictional disputes	Unfair labor practices						
Decisions based on stipulated record.....	4	4	4	0	0	0	0	0	0	0	0	0	0
Supplemental ULP decisions.....	77	21	20	0	0	0	0	0	0	0	0	1	0
Backpay decisions.....	16	8	8	0	0	0	0	0	0	0	0	0	0

<sup>1</sup> See Glossary of terms for definitions.

**Table 3B.-Formal Actions Taken in Representation and Union Deauthorization Cases,  
Fiscal Year 2005<sup>1</sup>**

Types of formal actions taken	Formal actions taken by type of case					
	Cases in which formal actions taken <sup>2</sup>	Total formal actions taken <sup>3</sup>	RC	RM	RD	UD
Hearings completed, total.....	573	552	500	5	47	4
Initial hearing.....	445	429	388	4	37	2
Hearing on objections and/or challenges.....	128	123	112	1	10	2
Decisions issued, total.....	427	408	368	5	35	11
By Regional Director.....	384	368	332	3	33	9
Elections directed.....	331	315	293	1	21	8
Dismissals on record.....	53	53	39	2	12	1
By Board.....	43	40	36	2	2	2
Transferred by Regional Directors for initial decision.....	1	1	1	0	0	0
Elections directed.....	1	1	1	0	0	0
Dismissals on record.....	0	0	0	0	0	0
Other.....	0	0	0	0	0	0
Review of Regional Directors' decisions:						
Requests for review received.....	190	174	140	8	26	1
Withdrawn before request ruled upon.....	31	27	18	0	9	1
Board action on request ruled upon, total.....	154	144	120	8	16	1
Granted.....	30	27	26	0	1	1
Denied.....	114	108	87	7	14	0
Remanded.....	10	9	7	1	1	0
Withdrawn after request granted, before Board review.....	5	5	5	0	0	0
Board decision after review, total.....	42	39	35	2	2	2
Regional Directors' decisions:						
Affirmed.....	7	7	5	1	1	0
Modified.....	6	5	5	0	0	0
Reversed.....	29	27	25	1	1	2
Outcome:						
Election directed.....	39	36	33	2	1	1
Dismissals on record.....	3	3	2	0	1	0
Other.....	0	0	0	0	0	1
Decisions on Objections and/or Challenges, total.....	468	449	398	3	48	5
By Regional Directors.....	198	187	167	1	19	2
By Administrative Law Judges.....	19	17	17	0	0	0
By Board.....	251	245	214	2	29	3
In stipulated elections.....	220	216	188	1	27	1
No Exceptions to Regional Directors' reports.....	123	123	106	0	17	1
Exceptions to Regional Directors' reports.....	97	93	82	1	10	0
In directed elections ( after transfer by Regional Director).....	24	23	20	1	2	2
No exceptions to RDs/HOs Reports.....	7	7	5	1	1	2
Exceptions to RDs/HOs Reports.....	17	16	15	1	0	0
Review of Regional Directors' supplemental decisions:						
Request for review received.....	21	18	16	1	1	0
Withdrawn before request ruled upon.....	2	2	2	0	0	0
Board action on request ruled upon, total.....	22	18	16	1	1	0
Granted.....	7	5	5	0	0	0
Denied.....	7	7	5	1	1	0
Remanded.....	7	6	6	0	0	0

<sup>1</sup> See Glossary of terms for definitions.

<sup>2</sup> Total includes petitions consolidated into one decision.

<sup>3</sup> Case counts for UD not included.

**Table 3B.-Formal Actions Taken in Representation and Union Deauthorization Cases,  
Fiscal Year 2005<sup>1</sup>—Continued**

Types of formal actions taken	Formal actions taken by type of case					
	Cases in which formal actions taken <sup>2</sup>	Total formal actions taken <sup>3</sup>	RC	RM	RD	UD
Withdrawn after request granted, before Board review.....	0	0	0	0	0	0
Board decision after review, total.....	7	6	6	0	0	0
Regional Directors' decisions:						
Affirmed.....	0	0	0	0	0	0
Modified.....	7	6	6	0	0	0
Reversed.....	0	0	0	0	0	0

<sup>1</sup> See Glossary of terms for definitions.

<sup>2</sup> Total includes petitions consolidated into one decision.

<sup>3</sup> Case counts for UD not included.

**Table 3C.—Formal Actions Taken in Amendment of Certification and  
Unit Clarification Cases, Fiscal Year 2005<sup>1</sup>**

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case <sup>2</sup>	
		AC	UC
Hearings completed.....	28	0	27
Decisions issued after hearing.....	34	2	31
By Regional Directors.....	31	2	28
By Board.....	3	0	3
Transferred by Regional Directors for initial decision.....	0	0	0
Review of Regional Directors' decisions:.....			
Requests for review received.....	13	0	12
Withdrawn before request ruled upon.....	1	0	1
Board action on requests ruled upon, total.....	13	0	12
Granted .....	2	0	2
Denied.....	10	0	9
Remanded.....	1	0	1
Withdrawn after request granted, before Board review.....	0	0	0
Board decision after review, total.....	3	0	3
Regional Directors' decisions:.....			
Affirmed.....	0	0	0
Modified.....	1	0	1
Reversed.....	2	0	2

<sup>1</sup> See Glossary of terms for definitions.

<sup>2</sup> While columns at left counts "cases," these two columns reflect "situations," i.e., one or more unfair labor practice cases involving the same factual situation.

**Table 4.-Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 2005<sup>1</sup>**

Action taken	Total all	Remedial action taken by–											
		Employer						Union					
		Total	Pursuant to–					Total	Pursuant to–				
			Agreement of parties		Recommendation of administrative law judge	Order of–			Agreement of parties		Recommendation of administrative law judge	Order of–	
			Informal settlement	Formal settlement		Board	Court		Informal settlement	Formal settlement		Board	Court
A. By number of cases involved...	<sup>2</sup> 10,744	--	--	--	--	--	--	--	--	--	--	--	--
Notice posted .....	1,728	1,455	1,166	5	75	120	89	273	238	1	8	13	13
Recognition or other assistance withdrawn .....	9	9	8	0	0	0	1	--	--	--	--	--	--
Employer–dominated union disestablished .....	5	5	4	0	0	1	0	--	--	--	--	--	--
Employees offered reinstatement .....	1,042	1,042	911	1	30	46	54	--	--	--	--	--	--
Employees placed on preferential hiring list .....	29	29	25	0	3	0	1	--	--	--	--	--	--
Hiring hall rights restored.....	20	--	--	--	--	--	--	20	19	0	0	1	0
Objections to employment withdrawn.....	6	--	--	--	--	--	--	6	4	0	0	2	0
Picketing ended.....	71	--	--	--	--	--	--	71	70	0	0	0	1
Work stoppage ended.....	17	--	--	--	--	--	--	17	16	0	1	0	0
Collective bargaining begun....	2,332	2,222	2,097	4	24	53	44	110	106	0	2	1	1
Backpay distributed.....	1,787	1,732	1,580	2	36	61	53	55	50	0	1	2	2
Reimbursement of fees, dues, and fines.....	153	59	50	0	1	4	4	94	87	0	1	4	2
Other conditions of employment improved.....	0	0	0	0	0	0	0	0	0	0	0	0	0
Other remedies.....	0	0	0	0	0	0	0	0	0	0	0	0	0
B. By number of employees affected:													

<sup>1</sup> See Glossary of terms for definitions. Data in this table are based on unfair labor practice cases that were closed during Fiscal Year 2005 after the company and/or union had satisfied all remedial action requirements.

<sup>2</sup> A single case usually results in more than one remedial action, therefore, the total number of actions exceeds the number of cases involved.

**Table 4.-Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 2005<sup>1</sup>—Continued**

Employees offered reinstatement, total.....	2,008	2,008	1,419	1	51	271	266	--	--	--	--	--	--
Accepted.....	1,580	1,580	1,179	1	24	252	124	--	--	--	--	--	--
Declined.....	428	428	240	0	27	19	142	--	--	--	--	--	--
Employees placed on preferential hiring list.....	150	150	144	0	5	0	1	--	--	--	--	--	--
Hiring hall rights restored.....	22	--	--	--	--	--	--	22	21	0	0	1	0
Objections to employment withdrawn.....	6	--	--	--	--	--	--	6	4	0	0	2	0
Employees receiving backpay:													
From either employer or union.....	31,497	31,358	25,620	15	642	2,150	2,931	139	132	0	1	5	1
From both employer and union.....	67	67	67	0	0	0	0	0	0	0	0	0	0
Employees reimbursed for fees, dues, and fines:													
From either employer or union.....	1,597	447	441	0	1	2	3	1,150	331	0	0	818	1
From both employer and union.....	1,289	791	351	0	10	430	0	498	105	0	0	392	1
C. By amounts of monetary recovery, total .....	84,313,802	83,804,286	44,303,931	36,883	1,914,057	12,233,351	25,316,064	509,516	309,156	0	27,786	104,009	68,565
Backpay (includes all monetary payments except fees, dues, and fines).....	83,837,873	83,420,831	44,083,385	36,883	1,914,027	12,097,065	25,289,471	417,042	247,818	0	26,377	75,000	67,847
Reimbursement of fees, dues, and fines.....	475,929	383,455	220,546	0	30	136,286	26,593	92,474	61,338	0	1,409	29,009	718

<sup>1</sup> See Glossary of terms for definitions. Data in this table are based on unfair labor practice cases that were closed during Fiscal Year 2005 after the company and/or union had satisfied all remedial action requirements.

<sup>2</sup> A single case usually results in more than one remedial action, therefore, the total number of actions exceeds the number of cases involved.

**Table 5.—Industrial Distribution of Cases Received, Fiscal Year 2005<sup>1</sup>**

Industrial Group <sup>2</sup>	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD			
														UD	AC	UC
Crop Production.....	16	14	10	3	0	0	0	0	1	1	0	0	1	0	0	1
Animal Production.....	25	22	17	5	0	0	0	0	0	3	2	0	1	0	0	0
Forestry and Logging.....	6	6	1	5	0	0	0	0	0	0	0	0	0	0	0	0
Fishing, Hunting and Trapping.....	2	1	1	0	0	0	0	0	0	1	1	0	0	0	0	0
Support Activities for Agriculture and Forestry.....	19	11	8	2	0	0	0	0	1	8	6	0	2	0	0	0
Agriculture, Forestry, Fishing, and Hunting.....	68	54	37	15	0	0	0	0	2	13	9	0	4	0	0	1
Oil and Gas Extraction.....	17	15	15	0	0	0	0	0	0	2	2	0	0	0	0	0
Mining (except Oil and Gas).....	183	158	139	16	2	1	0	0	0	24	13	0	11	1	0	0
Support Activities for Mining.....	23	16	13	3	0	0	0	0	0	7	6	1	0	0	0	0
Mining.....	223	189	167	19	2	1	0	0	0	33	21	1	11	1	0	0
Utilities.....	512	426	317	104	2	0	3	0	0	82	75	1	6	1	1	2
Building, Developing and General Contracting.....	486	345	193	66	53	16	3	0	14	137	137	0	0	1	1	2
Heavy Construction.....	415	267	149	64	31	15	2	0	6	148	142	1	5	0	0	0
Special Trade Contractors.....	3,069	1,907	1,375	382	91	36	5	0	18	1,157	1,101	25	31	1	0	4
Construction.....	3,970	2,519	1,717	512	175	67	10	0	38	1,442	1,380	26	36	2	1	6
Food Manufacturing.....	894	786	613	168	5	0	0	0	0	100	79	2	19	4	0	4
Beverage and Tobacco Product Manufacturing.....	192	151	114	35	2	0	0	0	0	39	28	1	10	2	0	0
Textile Mills.....	45	43	34	9	0	0	0	0	0	2	1	1	0	0	0	0
Textile Product Mills.....	22	21	16	5	0	0	0	0	0	1	1	0	0	0	0	0
Apparel Manufacturing.....	27	21	15	6	0	0	0	0	0	6	6	0	0	0	0	0
Leather and Allied Product Manufacturing.....	10	10	4	6	0	0	0	0	0	0	0	0	0	0	0	0
31-Manufacturing.....	1,190	1,032	796	229	7	0	0	0	0	148	115	4	29	6	0	4
Wood Product Manufacturing.....	113	99	77	18	3	1	0	0	0	11	6	2	3	2	0	1
Paper Manufacturing.....	383	345	260	84	0	1	0	0	0	37	26	0	11	0	0	1
Printing and Related Support Activities.....	113	96	84	12	0	0	0	0	0	17	12	0	5	0	0	0
Petroleum and Coal Products Manufacturing.....	119	91	75	15	0	0	0	0	1	25	23	0	2	0	0	3

<sup>1</sup> See Glossary of terms for definitions.

<sup>2</sup> Source: Standard Industrial Classification, Statistical Policy Division, Office of Management and Budget, Washington, D.C., 1972.

**Table 5.—Industrial Distribution of Cases Received, Fiscal Year 2005<sup>1</sup>—Continued**

Industrial Group <sup>2</sup>	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD			
														UD	AC	UC
Chemical Manufacturing.....	313	267	220	41	4	1	0	0	1	40	30	1	9	1	0	5
Plastics and Rubber Products Manufacturing.....	212	172	134	36	2	0	0	0	0	38	30	0	8	2	0	0
Nonmetallic Mineral Product Manufacturing.....	233	189	154	34	0	1	0	0	0	43	35	2	6	1	0	0
32-Manufacturing.....	1,486	1,259	1,004	240	9	4	0	0	2	211	162	5	44	6	0	10
Primary Metal Manufacturing.....	477	446	315	123	6	0	0	0	2	29	18	1	10	1	0	1
Fabricated Metal Product Manufacturing.....	384	320	249	66	4	1	0	0	0	62	36	5	21	2	0	0
Machinery Manufacturing.....	328	287	213	68	5	0	0	0	1	37	27	1	9	1	0	3
Computer and Electronic Product Manufacturing..	69	62	45	14	2	1	0	0	0	6	5	1	0	0	0	1
Electrical Equipment, Appliance and Component Manufacturing.....	254	232	177	47	5	1	0	0	2	22	10	1	11	0	0	0
Transportation Equipment Manufacturing.....	1,267	1,176	751	418	2	1	0	3	1	82	55	3	24	4	0	5
Furniture and Related Product Manufacturing.....	98	82	67	14	0	0	1	0	0	16	9	1	6	0	0	0
Miscellaneous Manufacturing.....	527	443	339	98	4	1	0	0	1	76	57	1	18	4	0	4
33-Manufacturing.....	3,404	3,048	2,156	848	28	5	1	3	7	330	217	14	99	12	0	14
Wholesale Trade, Durable Goods.....	255	205	150	48	6	1	0	0	0	47	37	2	8	2	0	1
Wholesale Trade, Nondurable Goods.....	421	333	249	73	7	2	1	0	1	79	56	4	19	0	0	9
Wholesale Trade.....	676	538	399	121	13	3	1	0	1	126	93	6	27	2	0	10
Motor Vehicle and Parts Dealers.....	261	191	166	20	3	0	0	0	2	68	52	3	13	0	0	2
Furniture and Home Furnishings Stores.....	29	26	24	2	0	0	0	0	0	3	2	0	1	0	0	0
Electronics and Appliance Stores.....	12	7	7	0	0	0	0	0	0	5	4	0	1	0	0	0
Building Material and Garden Equipment and Supplies Dealers.....	56	39	32	6	1	0	0	0	0	16	10	2	4	0	0	1
Food and Beverage Stores.....	668	583	376	198	3	0	1	0	5	81	53	8	20	0	0	4
Health and Personal Care Stores.....	90	65	42	22	1	0	0	0	0	23	18	1	4	1	0	1
Gasoline Stations.....	7	6	4	2	0	0	0	0	0	1	1	0	0	0	0	0
Clothing and Clothing Accessories Stores.....	40	34	24	7	1	1	0	0	1	6	5	0	1	0	0	0

<sup>1</sup> See Glossary of terms for definitions.

<sup>2</sup> Source: Standard Industrial Classification, Statistical Policy Division, Office of Management and Budget, Washington, D.C., 1972.

**Table 5.—Industrial Distribution of Cases Received, Fiscal Year 2005<sup>1</sup>—Continued**

Industrial Group <sup>2</sup>	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD			
														UD	AC	UC
44-Retail Trade.....	1,163	951	675	257	9	1	1	0	8	203	145	14	44	1	0	8
Sporting Goods, Hobby, Book and Music Stores....	29	25	22	3	0	0	0	0	0	1	0	0	1	0	0	3
General Merchandise Stores.....	138	119	94	23	1	0	0	0	1	17	9	0	8	2	0	0
Miscellaneous Store Retailers.....	58	46	37	7	1	0	1	0	0	12	11	0	1	0	0	0
Nonstore Retailers.....	29	26	19	6	0	1	0	0	0	3	1	0	2	0	0	0
45-Retail Trade.....	254	216	172	39	2	1	1	0	1	33	21	0	12	2	0	3
Air Transportation.....	36	24	20	4	0	0	0	0	0	12	11	0	1	0	0	0
Rail Transportation.....	28	24	22	2	0	0	0	0	0	4	3	0	1	0	0	0
Water Transportation.....	196	192	73	119	0	0	0	0	0	4	4	0	0	0	0	0
Truck Transportation.....	729	603	473	123	4	1	1	0	1	124	98	2	24	2	0	0
Transit and Ground Passenger Transportation.....	630	498	372	125	1	0	0	0	0	122	99	2	21	7	0	3
Pipeline Transportation.....	17	13	9	4	0	0	0	0	0	4	3	0	1	0	0	0
Scenic and Sightseeing Transportation.....	28	25	20	5	0	0	0	0	0	3	2	0	1	0	0	0
Support Activities for Transportation.....	421	355	231	122	2	0	0	0	0	61	56	1	4	4	0	1
48-Transportation.....	2,085	1734	1,220	504	7	1	1	0	1	334	276	5	53	13	0	4
Postal Service.....	2,265	2263	1,557	706	0	0	0	0	0	2	1	0	1	0	0	0
Couriers and Messengers.....	436	352	279	73	0	0	0	0	0	84	79	0	5	0	0	0
Warehousing and Storage Facilities.....	380	295	230	60	4	1	0	0	0	84	73	0	11	0	0	1
49-Transportation.....	3,081	2910	2,066	839	4	1	0	0	0	170	153	0	17	0	0	1
Publishing Industries.....	264	241	194	47	0	0	0	0	0	21	11	0	10	1	0	1
Motion Picture and Sound Recording Industries....	85	69	38	27	2	2	0	0	0	16	14	0	2	0	0	0
Broadcasting and Telecommunications.....	868	765	595	167	1	2	0	0	0	99	67	0	32	3	0	1
Information Services and Data Processing Services.....	67	53	42	11	0	0	0	0	0	14	12	0	2	0	0	0
Information.....	1,284	1128	869	252	3	4	0	0	0	150	104	0	46	4	0	2

<sup>1</sup> See Glossary of terms for definitions.

<sup>2</sup>Source: Standard Industrial Classification, Statistical Policy Division, Office of Management and Budget, Washington, D.C., 1972.

**Table 5.—Industrial Distribution of Cases Received, Fiscal Year 2005<sup>1</sup>—Continued**

Industrial Group <sup>2</sup>	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD			
														UD	AC	UC
Monetary Authorities - Central Bank.....	28	21	19	0	2	0	0	0	0	7	5	0	2	0	0	0
Credit Intermediation and Related Activities.....	27	20	18	2	0	0	0	0	0	6	5	0	1	1	0	0
Securities, Commodity Contracts and Other Intermediation and Related Activities.....	5	5	4	1	0	0	0	0	0	0	0	0	0	0	0	0
Insurance Carriers and Related Activities.....	21	20	17	2	1	0	0	0	0	1	1	0	0	0	0	0
Funds, Trusts and Other Financial Vehicles (U.S. Only).....	13	9	7	2	0	0	0	0	0	4	3	0	1	0	0	0
Finance and Insurance.....	94	75	65	7	3	0	0	0	0	18	14	0	4	1	0	0
Real Estate.....	212	194	116	62	14	1	0	0	1	17	15	1	1	0	1	0
Rental and Leasing Services.....	115	79	60	15	2	0	0	0	2	31	26	0	5	4	0	1
Owners and Lessors of Other Non-Financial Assets.....	8	8	5	3	0	0	0	0	0	0	0	0	0	0	0	0
Real Estate and Rental and Leasing.....	335	281	181	80	16	1	0	0	3	48	41	1	6	4	1	1
Professional, Scientific and Technical Services	255	199	158	36	4	0	1	0	0	48	46	0	2	3	0	5
Management of Companies and Enterprises.....	63	53	35	17	1	0	0	0	0	8	8	0	0	2	0	0
Administrative and Support Services.....	1,941	1,639	1,183	423	21	4	1	1	6	279	233	4	42	12	2	9
Waste Management and Remediation Services.....	473	366	311	52	0	3	0	0	0	99	81	2	16	3	0	5
Administrative and Support, Waste Management and Remediation Services.....	2,414	2,005	1,494	475	21	7	1	1	6	378	314	6	58	15	2	14
Educational Services.....	311	240	202	34	4	0	0	0	0	64	45	1	18	3	1	3
Ambulatory Health Care Services.....	379	297	261	31	4	0	0	1	0	79	61	1	17	1	0	2
Hospitals.....	1,366	1,186	899	269	4	0	1	13	0	155	111	1	43	6	0	19
Nursing and Residential Care Facilities.....	1,452	1,125	956	152	2	0	2	13	0	310	232	4	74	6	0	11
Social Assistance.....	324	253	215	35	2	0	0	1	0	66	46	1	19	1	1	3
Health Care and Social Assistance.....	3,521	2,861	2,331	487	12	0	3	28	0	610	450	7	153	14	1	35
Performing Arts, Spectator Sports and Related Industries.....	231	192	118	67	4	0	3	0	0	36	34	0	2	1	0	2

<sup>1</sup> See Glossary of terms for definitions.

<sup>2</sup> Source: Standard Industrial Classification, Statistical Policy Division, Office of Management and Budget, Washington, D.C., 1972.

**Table 5.—Industrial Distribution of Cases Received, Fiscal Year 2005<sup>1</sup>—Continued**

Industrial Group <sup>2</sup>	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD			
														UD	AC	UC
Museums, Historical Sites and Similar Institutions	24	20	18	2	0	0	0	0	0	4	3	1	0	0	0	0
Amusement, Gambling and Recreation Industries..	294	277	221	54	1	0	1	0	0	14	9	1	4	3	0	0
Arts, Entertainment and Recreation.....	549	489	357	123	5	0	4	0	0	54	46	2	6	4	0	2
Accommodation.....	906	862	704	138	12	3	5	0	0	41	27	1	13	1	0	2
Foodservices and Drinking Places.....	408	350	250	83	8	4	4	0	1	55	37	1	17	3	0	0
Accommodation and Foodservices.....	1,314	1212	954	221	20	7	9	0	1	96	64	2	30	4	0	2
Repair and Maintenance.....	275	214	165	44	4	0	0	0	1	59	46	2	11	1	1	0
Personal and Laundry Services.....	312	266	220	43	3	0	0	0	0	45	32	1	12	0	0	1
Religious, Grantmaking, Civic, and Professional and Similar Organizations.....	460	397	244	152	1	0	0	0	0	52	42	0	10	1	0	10
Private Households.....	5	5	4	1	0	0	0	0	0	0	0	0	0	0	0	0
Other Services (except Public Administration)..	1,052	882	633	240	8	0	0	0	1	156	120	3	33	2	1	11
Executive, Legislative, Public Finance and General Government.....	19	15	10	5	0	0	0	0	0	4	4	0	0	0	0	0
Justice, Public Order, and Safety.....	56	39	25	12	1	0	1	0	0	14	12	0	2	0	0	3
Administration of Human Resource Programs.....	13	10	8	2	0	0	0	0	0	3	1	0	2	0	0	0
Administration of Housing Programs, Urban Planning, and Community Development.....	4	4	3	1	0	0	0	0	0	0	0	0	0	0	0	0
Administration of Economic Programs.....	18	14	9	5	0	0	0	0	0	3	2	1	0	0	0	1
Space Research and Technology.....	3	3	2	1	0	0	0	0	0	0	0	0	0	0	0	0
National Security and International Affairs.....	11	10	10	0	0	0	0	0	0	0	0	0	0	0	0	1
Public Administration.....	124	95	67	26	1	0	1	0	0	24	19	1	4	0	0	5
Unclassified Establishments.....	424	322	227	86	4	1	4	0	0	99	74	3	22	2	0	1
Total, all industrial groups.....	29,852	24,718	18,299	5,811	360	104	41	32	71	4,878	4,012	102	764	104	8	144

<sup>1</sup> See Glossary of terms for definitions.

<sup>2</sup> Source: Standard Industrial Classification, Statistical Policy Division, Office of Management and Budget, Washington, D.C., 1972.

**Table 6A.-Geographic Distribution of Cases Received, Fiscal Year 2005<sup>1</sup>**

Division and State <sup>2</sup>	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD			
														UD	AC	UC
Illinois.....	1,770	1493	1,000	399	49	25	3	0	17	254	193	4	57	7	0	16
Indiana.....	716	628	478	130	13	3	3	1	0	80	59	1	20	5	1	2
Michigan.....	1,707	1524	1,029	466	14	3	2	9	1	164	132	1	31	10	0	9
Ohio.....	1,825	1612	1,231	355	19	2	2	1	2	196	144	6	46	9	0	8
Wisconsin.....	516	433	324	94	12	1	1	0	1	73	35	5	33	4	0	6
East North Central.....	6,534	5690	4,062	1,444	107	34	11	11	21	767	563	17	187	35	1	41
Alabama.....	424	380	326	53	1	0	0	0	0	43	34	0	9	0	0	1
Kentucky.....	440	400	322	69	7	1	0	0	1	40	32	0	8	0	0	0
Mississippi.....	129	103	90	13	0	0	0	0	0	26	20	1	5	0	0	0
Tennessee.....	360	324	236	88	0	0	0	0	0	36	27	0	9	0	0	0
East South Central.....	1,353	1207	974	223	8	1	0	0	1	145	113	1	31	0	0	1
New Jersey.....	1,198	927	682	214	21	5	2	1	2	263	233	1	29	2	3	3
New York.....	4,120	2852	1,787	929	82	24	10	4	16	1241	1,173	7	61	14	1	12
Pennsylvania.....	1,631	1356	1,086	249	11	7	1	1	1	260	213	4	43	5	1	9
Middle Atlantic.....	6,949	5135	3,555	1,392	114	36	13	6	19	1764	1,619	12	133	21	5	24
Arizona.....	305	266	208	55	3	0	0	0	0	39	29	1	9	0	0	0
Colorado.....	469	417	344	73	0	0	0	0	0	52	37	1	14	0	0	0
Idaho.....	75	59	50	8	0	1	0	0	0	14	10	1	3	0	0	2
Montana.....	92	60	51	9	0	0	0	0	0	32	19	0	13	0	0	0
New Mexico.....	119	96	81	15	0	0	0	0	0	20	19	0	1	1	0	2
Nevada.....	634	588	511	66	8	1	1	0	1	46	39	1	6	0	0	0
Utah.....	87	74	50	17	7	0	0	0	0	13	9	0	4	0	0	0
Wyoming.....	49	43	41	2	0	0	0	0	0	6	5	0	1	0	0	0
Mountain.....	1,830	1603	1,336	245	18	2	1	0	1	222	167	4	51	1	0	4
Connecticut.....	454	388	290	95	1	1	0	1	0	65	57	1	7	1	0	0

<sup>1</sup> See Glossary of terms for definitions.

<sup>2</sup> The States are grouped according to the method used by the Bureau of Census, U.S. Department of Commerce.

**Table 6A.-Geographic Distribution of Cases Received, Fiscal Year 2005<sup>1</sup>—Continued**

Division and State <sup>2</sup>	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD			
														UD	AC	UC
Massachusetts.....	725	636	485	125	19	3	1	2	1	83	63	6	14	3	0	3
Maine.....	70	52	35	17	0	0	0	0	0	15	14	0	1	1	0	2
New Hampshire.....	75	53	47	6	0	0	0	0	0	21	21	0	0	1	0	0
Rhode Island.....	116	87	75	11	0	1	0	0	0	22	21	0	1	4	0	3
Vermont.....	62	56	46	10	0	0	0	0	0	5	2	0	3	0	0	1
New England.....	1,502	1272	978	264	20	5	1	3	1	211	178	7	26	10	0	9
Puerto Rico.....	355	277	213	64	0	0	0	0	0	74	71	0	3	2	0	2
Virgin Islands.....	31	21	20	1	0	0	0	0	0	9	7	0	2	0	0	1
Outlying Areas.....	386	298	233	65	0	0	0	0	0	83	78	0	5	2	0	3
Alaska.....	104	71	56	12	1	0	2	0	0	32	27	1	4	0	0	1
American Samoa.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
California.....	3,422	2964	2,146	743	42	7	5	5	16	421	331	14	76	19	0	18
Federated States of Micronesia.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Guam.....	1	0	0	0	0	0	0	0	0	1	1	0	0	0	0	0
Hawaii.....	333	282	218	52	6	0	6	0	0	51	32	2	17	0	0	0
Marshall Islands.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Northern Mariana Islands.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Oregon.....	268	190	141	42	6	0	0	1	0	74	45	7	22	1	0	3
Palau.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Washington.....	869	659	499	148	9	1	0	0	2	196	154	4	38	3	0	11
Pacific.....	4,997	4166	3,060	997	64	8	13	6	18	775	590	28	157	23	0	33
District Of Columbia.....	171	142	95	43	0	3	1	0	0	27	22	1	4	2	0	0
Delaware.....	78	64	44	15	3	1	0	0	1	14	13	0	1	0	0	0
Florida.....	875	767	624	140	1	1	0	0	1	108	82	4	22	0	0	0
Georgia.....	450	394	305	85	3	1	0	0	0	56	50	2	4	0	0	0

<sup>1</sup> See Glossary of terms for definitions.

<sup>2</sup> The States are grouped according to the method used by the Bureau of Census, U.S. Department of Commerce.

**Table 6A.-Geographic Distribution of Cases Received, Fiscal Year 2005<sup>1</sup>—Continued**

Division and State <sup>2</sup>	All cases	Unfair labor practice cases								Representation cases				Union deauthor-ization cases	Amend-ment of certifica-tion cases	Unit clari-fication cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD			
														UD	AC	UC
Maryland.....	349	266	189	71	3	2	0	0	1	81	69	0	12	1	0	1
North Carolina.....	294	270	217	53	0	0	0	0	0	24	20	0	4	0	0	0
South Carolina.....	148	135	120	15	0	0	0	0	0	13	9	1	3	0	0	0
Virginia.....	387	343	263	79	1	0	0	0	0	44	40	1	3	0	0	0
West Virginia.....	336	283	231	48	0	0	0	4	0	45	26	4	15	2	0	6
South Atlantic.....	3,088	2,664	2,088	549	11	8	1	4	3	412	331	13	68	5	0	7
Iowa.....	175	135	114	21	0	0	0	0	0	38	25	1	12	0	1	1
Kansas.....	143	119	91	27	1	0	0	0	0	24	16	0	8	0	0	0
Minnesota.....	371	273	222	46	1	1	1	1	1	89	60	1	28	4	0	5
Missouri.....	647	548	378	140	14	9	0	1	6	93	65	7	21	3	0	3
North Dakota.....	25	20	18	2	0	0	0	0	0	5	4	0	1	0	0	0
Nebraska.....	67	51	42	9	0	0	0	0	0	15	11	0	4	0	0	1
South Dakota.....	16	13	11	2	0	0	0	0	0	3	3	0	0	0	0	0
West North Central.....	1,444	1,159	876	247	16	10	1	2	7	267	184	9	74	7	1	10
Arkansas.....	194	167	138	28	1	0	0	0	0	27	20	1	6	0	0	0
Louisiana.....	249	213	156	57	0	0	0	0	0	34	30	2	2	0	1	1
Oklahoma.....	204	167	132	35	0	0	0	0	0	35	29	2	4	0	0	2
Texas.....	1,096	983	713	269	1	0	0	0	0	108	92	3	13	0	0	5
West South Central.....	1,743	1,530	1,139	389	2	0	0	0	0	204	171	8	25	0	1	8
Total, all States and areas.....	29,826	24,724	18,301	5,815	360	104	41	32	71	4,850	3,994	99	757	104	8	140

<sup>1</sup> See Glossary of terms for definitions.

<sup>2</sup> The States are grouped according to the method used by the Bureau of Census, U.S. Department of Commerce.

**Table 6B.-Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 2005<sup>1</sup>**

Standard Federal Regions <sup>2</sup>	All cases	Unfair labor practice cases								Representation cases				Union deauthor-ization cases	Amend-ment of certifica-tion cases	Unit clari-fication cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD			
														UD	AC	UC
Connecticut.....	454	388	290	95	1	1	0	1	0	65	57	1	7	1	0	0
Massachusetts.....	725	636	485	125	19	3	1	2	1	83	63	6	14	3	0	3
Maine.....	70	52	35	17	0	0	0	0	0	15	14	0	1	1	0	2
New Hampshire.....	75	53	47	6	0	0	0	0	0	21	21	0	0	1	0	0
Rhode Island.....	116	87	75	11	0	1	0	0	0	22	21	0	1	4	0	3
Vermont.....	62	56	46	10	0	0	0	0	0	5	2	0	3	0	0	1
Region I.....	1,502	1272	978	264	20	5	1	3	1	211	178	7	26	10	0	9
Delaware.....	78	64	44	15	3	1	0	0	1	14	13	0	1	0	0	0
New Jersey.....	1,198	927	682	214	21	5	2	1	2	263	233	1	29	2	3	3
New York.....	4,120	2852	1,787	929	82	24	10	4	16	1241	1,173	7	61	14	1	12
Puerto Rico.....	355	277	213	64	0	0	0	0	0	74	71	0	3	2	0	2
Virgin Islands.....	31	21	20	1	0	0	0	0	0	9	7	0	2	0	0	1
Region II.....	5,782	4141	2,746	1,223	106	30	12	5	19	1601	1,497	8	96	18	4	18
District Of Columbia.....	171	142	95	43	0	3	1	0	0	27	22	1	4	2	0	0
Maryland.....	349	266	189	71	3	2	0	0	1	81	69	0	12	1	0	1
Pennsylvania.....	1,631	1356	1,086	249	11	7	1	1	1	260	213	4	43	5	1	9
Virginia.....	387	343	263	79	1	0	0	0	0	44	40	1	3	0	0	0
West Virginia.....	336	283	231	48	0	0	0	4	0	45	26	4	15	2	0	6
Region III.....	2,874	2390	1,864	490	15	12	2	5	2	457	370	10	77	10	1	16
Alabama.....	424	380	326	53	1	0	0	0	0	43	34	0	9	0	0	1
Florida.....	875	767	624	140	1	1	0	0	1	108	82	4	22	0	0	0
Georgia.....	450	394	305	85	3	1	0	0	0	56	50	2	4	0	0	0
Kentucky.....	440	400	322	69	7	1	0	0	1	40	32	0	8	0	0	0
Mississippi.....	129	103	90	13	0	0	0	0	0	26	20	1	5	0	0	0
North Carolina.....	294	270	217	53	0	0	0	0	0	24	20	0	4	0	0	0
South Carolina.....	148	135	120	15	0	0	0	0	0	13	9	1	3	0	0	0
Tennessee.....	360	324	236	88	0	0	0	0	0	36	27	0	9	0	0	0
Region IV.....	3,120	2773	2,240	516	12	3	0	0	2	346	274	8	64	0	0	1
Illinois.....	1,770	1493	1,000	399	49	25	3	0	17	254	193	4	57	7	0	16
Indiana.....	716	628	478	130	13	3	3	1	0	80	59	1	20	5	1	2
Michigan.....	1,707	1524	1,029	466	14	3	2	9	1	164	132	1	31	10	0	9
Minnesota.....	371	273	222	46	1	1	1	1	1	89	60	1	28	4	0	5
Ohio.....	1,825	1612	1,231	355	19	2	2	1	2	196	144	6	46	9	0	8
Wisconsin.....	516	433	324	94	12	1	1	0	1	73	35	5	33	4	0	6
Region V.....	6,905	5963	4,284	1,490	108	35	12	12	22	856	623	18	215	39	1	46
Arkansas.....	194	167	138	28	1	0	0	0	0	27	20	1	6	0	0	0

<sup>1</sup> See Glossary of terms for definitions.

<sup>2</sup> The States are grouped according to the method used by the Bureau of Census, U.S. Department of Commerce.

**Table 6B.-Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 2005<sup>1</sup>—Continued**

Standard Federal Regions <sup>2</sup>	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD			
														UD	AC	UC
Louisiana.....	249	213	156	57	0	0	0	0	0	34	30	2	2	0	1	1
New Mexico.....	119	96	81	15	0	0	0	0	0	20	19	0	1	1	0	2
Oklahoma.....	204	167	132	35	0	0	0	0	0	35	29	2	4	0	0	2
Texas.....	1,096	983	713	269	1	0	0	0	0	108	92	3	13	0	0	5
Region VI.....	1,862	1,626	1,220	404	2	0	0	0	0	224	190	8	26	1	1	10
Iowa.....	175	135	114	21	0	0	0	0	0	38	25	1	12	0	1	1
Kansas.....	143	119	91	27	1	0	0	0	0	24	16	0	8	0	0	0
Missouri.....	647	548	378	140	14	9	0	1	6	93	65	7	21	3	0	3
Nebraska.....	67	51	42	9	0	0	0	0	0	15	11	0	4	0	0	1
Region VII.....	1,032	853	625	197	15	9	0	1	6	170	117	8	45	3	1	5
Colorado.....	469	417	344	73	0	0	0	0	0	52	37	1	14	0	0	0
Montana.....	92	60	51	9	0	0	0	0	0	32	19	0	13	0	0	0
North Dakota.....	25	20	18	2	0	0	0	0	0	5	4	0	1	0	0	0
South Dakota.....	16	13	11	2	0	0	0	0	0	3	3	0	0	0	0	0
Utah.....	87	74	50	17	7	0	0	0	0	13	9	0	4	0	0	0
Wyoming.....	49	43	41	2	0	0	0	0	0	6	5	0	1	0	0	0
Region VIII.....	738	627	515	105	7	0	0	0	0	111	77	1	33	0	0	0
American Samoa.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Arizona.....	305	266	208	55	3	0	0	0	0	39	29	1	9	0	0	0
California.....	3,422	2,964	2,146	743	42	7	5	5	16	421	331	14	76	19	0	18
Federated States of Micronesia.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Guam.....	1	0	0	0	0	0	0	0	0	1	1	0	0	0	0	0
Hawaii.....	333	282	218	52	6	0	6	0	0	51	32	2	17	0	0	0
Marshall Islands.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Northern Mariana Islands.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Nevada.....	634	588	511	66	8	1	1	0	1	46	39	1	6	0	0	0
Palau.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Region IX.....	4,695	4,100	3,083	916	59	8	12	5	17	558	432	18	108	19	0	18
Alaska.....	104	71	56	12	1	0	2	0	0	32	27	1	4	0	0	1
Idaho.....	75	59	50	8	0	1	0	0	0	14	10	1	3	0	0	2
Oregon.....	268	190	141	42	6	0	0	1	0	74	45	7	22	1	0	3
Washington.....	869	659	499	148	9	1	0	0	2	196	154	4	38	3	0	11
Region X.....	1,316	979	746	210	16	2	2	1	2	316	236	13	67	4	0	17
Total, all States and areas.....	29,826	24,724	18,301	5,815	360	104	41	32	71	4,850	3,994	99	757	104	8	140

<sup>1</sup> See Glossary of terms for definitions.

<sup>2</sup> The States are grouped according to the method used by the Bureau of Census, U.S. Department of Commerce.

**Table 7.—Analysis of Methods of Unfair Labor Practices Cases Closed, Fiscal Year 2005<sup>1</sup>**

Method and stage of disposition	All C cases			CA cases		CB cases		CC cases		CD cases <sup>2</sup>		CE cases		CG cases		CP cases	
	Number	Percent of total closed	Percent of total method	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed
Total number of cases closed.....	26,857	100.0	--	20,250	100.0	6,017	100.0	343	100.0	105	100.0	36	100.0	34	100.0	72	100.0
Agreement of the parties.....	9,722	36.2	100.0	8,417	41.6	1,125	18.7	110	32.1	16	15.2	6	16.7	17	50.0	31	43.1
Informal settlement.....	9,689	36.1	99.7	8,391	41.4	1,125	18.7	109	31.8	16	15.2	6	16.7	17	50.0	25	34.7
Before issuance of complaint.....	7,850	29.2	80.7	6,800	33.6	899	14.9	97	28.3	16	15.2	5	13.9	14	41.2	19	26.4
After issuance of complaint, before opening of hearing.....	1,764	6.6	18.1	1,525	7.5	217	3.6	12	3.5	0	0.0	1	2.8	3	8.8	6	8.3
After hearing opened, before issuance of administrative law judge's decision.....	75	0.3	0.8	66	0.3	9	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Formal settlement.....	33	0.1	0.3	26	0.1	0	0.0	1	0.3	0	0.0	0	0.0	0	0.0	6	8.3
Before opening of hearing.....	33	0.1	0.3	26	0.1	0	0.0	1	0.3	0	0.0	0	0.0	0	0.0	6	8.3
Stipulated decision.....	24	0.1	0.2	24	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Consent decree.....	9	0.0	0.1	2	0.0	0	0.0	1	0.3	0	0.0	0	0.0	0	0.0	6	8.3
After hearing opened.....	0	0.0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Stipulated decision.....	0	0.0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Consent decree.....	0	0.0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Compliance with.....	740	2.8	100.0	602	3.0	128	2.1	5	1.5	1	1.0	1	2.8	0	0.0	3	4.2
Administrative law judge's decision.....	4	0.0	0.5	3	0.0	1	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Board decision.....	505	1.9	68.2	385	1.9	116	1.9	2	0.6	0	0.0	1	2.8	0	0.0	1	1.4
Adopting administrative law judge's decision (no exceptions filed).....	147	0.5	19.9	131	0.6	13	0.2	2	0.6	0	0.0	1	2.8	0	0.0	0	0.0
Contested.....	358	1.3	48.4	254	1.3	103	1.7	0	0.0	0	0.0	0	0.0	0	0.0	1	1.4
Circuit court of appeals decree.....	231	0.9	31.2	214	1.1	11	0.2	3	0.9	1	1.0	0	0.0	0	0.0	2	2.8

<sup>1</sup> See Table 8 for summary of disposition of stage. See Glossary of terms for definitions.

<sup>2</sup> CD cases closed in this stage are processed as jurisdictional disputes under Sec. 10(k) of the Act. See Table 7A

**Table 7.—Analysis of Methods of Unfair Labor Practices Cases Closed, Fiscal Year 2005<sup>1</sup>—Continued**

Method and stage of disposition	All C cases			CA cases		CB cases		CC cases		CD cases <sup>2</sup>		CE cases		CG cases		CP cases	
	Num- ber	Per- cent of total closed	Per- cent of total method	Num- ber	Per- cent of total closed	Num- ber	Per- cent of total closed	Num- ber	Per- cent of total closed	Num- ber	Per- cent of total closed	Num- ber	Per- cent of total closed	Num- ber	Per- cent of total closed	Num- ber	Per- cent of total closed
Supreme Court action.....	0	0.0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Withdrawal.....	8,217	30.6	100.0	6,222	30.7	1,779	29.6	129	37.6	37	35.2	16	44.4	8	23.5	26	36.1
Before issuance of complaint.....	8,112	30.2	98.7	6,130	30.3	1,771	29.4	125	36.4	37	35.2	16	44.4	8	23.5	25	34.7
After issuance of complaint, before opening of hearing.....	70	0.3	0.9	57	0.3	8	0.1	4	1.2	0	0.0	0	0.0	0	0.0	1	1.4
After hearing opened, before administrative law judge's decision.....	0	0.0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
After administrative law judge's decision, before Board decision.....	26	0.1	0.3	26	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
After Board or court decision.....	9	0.0	0.1	9	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Dismissal .....	8,012	29.8	100.0	4,876	24.1	2,983	49.6	99	28.9	20	19.0	13	36.1	9	26.5	12	16.7
Before issuance of complaint.....	7,880	29.3	98.4	4,759	23.5	2,969	49.3	98	28.6	20	19.0	13	36.1	9	26.5	12	16.7
After issuance of complaint, before opening of hearing.....	76	0.3	0.9	67	0.3	8	0.1	1	0.3	0	0.0	0	0.0	0	0.0	0	0.0
After hearing opened, before administrative law judge's decision.....	0	0.0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
By administrative law judge's decision.....	4	0.0	0.0	4	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
By Board decision.....	51	0.2	0.6	45	0.2	6	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Adopting administrative law judge's decision (no exceptions filed).....	23	0.1	0.3	18	0.1	5	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Contested.....	28	0.1	0.3	27	0.1	1	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
By circuit court of appeals decree.....	1	0.0	0.0	1	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
By Supreme Court action.....	0	0.0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0

<sup>1</sup> See Table 8 for summary of disposition of stage. See Glossary of terms for definitions.

<sup>2</sup> CD cases closed in this stage are processed as jurisdictional disputes under Sec. 10(k) of the Act. See Table 7A

**Table 7.—Analysis of Methods of Unfair Labor Practices Cases Closed, Fiscal Year 2005<sup>1</sup>—Continued**

Method and stage of disposition	All C cases			CA cases		CB cases		CC cases		CD cases <sup>2</sup>		CE cases		CG cases		CP cases	
	Num- ber	Per- cent of total closed	Per- cent of total method	Num- ber	Per- cent of total closed	Num- ber	Per- cent of total closed	Num- ber	Per- cent of total closed	Num- ber	Per- cent of total closed	Num- ber	Per- cent of total closed	Num- ber	Per- cent of total closed	Num- ber	Per- cent of total closed
10(k) actions (see Table 7A for details of dis- positions).....	31	0.1	--	0	0.0	0	0.0	0	0.0	31	29.5	0	0.0	0	0.0	0	0.0
Otherwise (compliance with order of administrative law judge or Board not achieved—firm went out of business).....	135	0.5	--	133	0.7	2	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0

<sup>1</sup> See Table 8 for summary of disposition of stage. See Glossary of terms for definitions.

<sup>2</sup> CD cases closed in this stage are processed as jurisdictional disputes under Sec. 10(k) of the Act. See Table 7A

**Table 7A.-Analysis of Methods of Disposition of Jurisdictional Dispute Cases  
Closed Prior to Unfair Labor Practice Proceedings, Fiscal Year 2005<sup>1</sup>**

Method and stage of disposition	Number of cases	Percent of total closed
Total number of cases closed before issuance of complaint.....	31	100.0
Agreement of the parties-informal settlement.....	14	45.2
Before 10(k) notice.....	6	19.4
After 10(k) notice, before opening of 10(k) hearing.....	8	25.8
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute.....	0	0.0
After Board decision and determination of dispute.....	0	0.0
Compliance with Board decision and determination of dispute.....	0	0.0
Withdrawal.....	8	25.8
Before 10(k) notice.....	6	19.4
After 10(k) notice, before opening of 10(k) hearing.....	1	3.2
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute.....	0	0.0
After Board decision and determination of dispute.....	1	3.2
Dismissal.....	9	29.0
Before 10(k) notice.....	7	22.6
After 10(k) notice, before opening of 10(k) hearing.....	1	3.2
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute.....	0	0.0
By Board decision and determination of dispute.....	1	3.2

<sup>1</sup> See Glossary of terms for definitions.

**Table 8.—Disposition by Stage of Unfair Labor Practice Cases Closed, Fiscal Year 2005<sup>1</sup>**

Stage of disposition	All C cases		CA cases		CB cases		CC cases		CD cases		CE cases		CG cases		CP cases	
	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed
Total number of cases closed.....	26,960	100.0	20,342	100.0	6,023	100.0	347	100.0	106	100.0	36	100.0	34	100.0	72	100.0
Before issuance of complaint.....	23,875	88.6	17,701	87.0	5,641	93.7	320	92.2	92	86.8	34	94.4	31	91.2	56	77.8
After issuance of complaint, before opening of hearing.....	1,967	7.3	1,692	8.3	234	3.9	20	5.8	10	9.4	1	2.8	3	8.8	7	9.7
After hearing opened, before issuance of administrative law judge's decision.....	110	0.4	98	0.5	12	0.2	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
After administrative law judge's decision, before issuance of Board decision.....	42	0.2	40	0.2	2	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
After Board order adopting administrative law judge's decision in absence of exceptions.....	191	0.7	169	0.8	18	0.3	2	0.6	1	0.9	1	2.8	0	0.0	0	0.0
After Board decision, before circuit court decree...	444	1.6	335	1.6	105	1.7	1	0.3	2	1.9	0	0.0	0	0.0	1	1.4
After circuit court decree, before Supreme Court action.....	331	1.2	307	1.5	11	0.2	4	1.2	1	0.9	0	0.0	0	0.0	8	11.1
After Supreme Court action.....	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0

<sup>1</sup> See Glossary of terms for definitions.

**Table 9.—Disposition by Stage of Representation and Union Deauthorization Cases Closed, Fiscal Year 2005<sup>1</sup>**

Stage of disposition	All R cases		RC cases		RM cases		RD cases		UD cases	
	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed
Total number of cases closed.....	4,783	100.0	3,900	100.0	108	100.0	775	100.0	112	100.0
Before issuance of notice of hearing.....	516	10.8	335	8.6	28	25.9	153	19.7	65	58.0
After issuance of notice, before close of hearing.....	3,614	75.6	3,006	77.1	68	63.0	540	69.7	29	25.9
After hearing closed, before issuance of decision.....	69	1.4	57	1.5	0.0	0.0	12	1.5	1	0.9
After issuance of Regional Director's decision.....	396	8.3	347	8.9	8	7.4	41	5.3	12	10.7
After issuance of Board decision <sup>2</sup> .....	188	3.9	155	4.0	4	3.7	29	3.7	5	4.5

<sup>1</sup> See Glossary of terms for definitions.<sup>2</sup> Cases closed after Board decision includes all cases where the Board has granted review in a preelection case, or exceptions have been filed in a postelection proceeding.

**Table 10 – Analysis of Methods of Disposition of Representation and Union Deauthorization Cases Closed, Fiscal Year 2005<sup>1</sup>**

Method and stage of disposition	All R cases		RC cases		RM cases		RD cases		UD cases	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total, all.....	4,676	100.0	3,810	100.0	107	100.0	759	100.0	102	100.0
Certification issued, total.....	2,507	53.6	2,086	54.8	49	45.8	372	49.0	51	50.0
After:										
Consent election.....	88	1.9	80	2.1	1	0.9	7	0.9	1	1.0
Before notice of hearing.....	8	0.2	8	0.2	0	0.0	0	0.0	1	1.0
After notice of hearing, before hearing closed..	80	1.7	72	1.9	1	0.9	7	0.9	0	0.0
After hearing closed, before decision.....	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Stipulated election.....	2,067	44.2	1,704	44.7	41	38.3	322	42.4	40	39.2
Before notice of hearing.....	263	5.6	202	5.3	6	5.6	55	7.2	23	22.5
After notice of hearing, before hearing closed...	1,772	37.9	1,476	38.7	35	32.7	261	34.4	16	15.7
After hearing closed, before decision.....	32	0.7	26	0.7	0	0.0	6	0.8	1	1.0
Expedited election.....	1	0.0	0	0.0	1	0.9	0	0.0	0	0.0
Regional Director-directed election.....	188	4.0	169	4.4	2	1.9	17	2.2	5	4.9
Board-directed election.....	163	3.5	133	3.5	4	3.7	26	3.4	5	4.9
By withdrawal, total.....	1,986	42.5	1,624	42.6	43	40.2	319	42.0	39	38.2
Before notice of hearing.....	210	4.5	119	3.1	14	13.1	77	10.1	28	27.5
After notice of hearing, before hearing closed.....	1,671	35.7	1,406	36.9	28	26.2	237	31.2	11	10.8
After hearing closed, before decision.....	28	0.6	25	0.7	0	0.0	3	0.4	0	0.0
After Regional Director's decision and direction of election.....	60	1.3	58	1.5	1	0.9	1	0.1	0	0.0
After Board decision and direction of election.....	17	0.4	16	0.4	0	0.0	1	0.1	0	0.0
By dismissal, total.....	183	3.9	100	2.6	15	14.0	68	9.0	12	11.8
Before notice of hearing.....	34	0.7	5	0.1	8	7.5	21	2.8	8	7.8
After notice of hearing, before hearing closed.....	41	0.9	8	0.2	3	2.8	30	4.0	2	2.0
After hearing closed, before decision.....	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
By Regional Director's decision.....	100	2.1	81	2.1	4	3.7	15	2.0	2	2.0
By Board decision.....	8	0.2	6	0.2	0	0.0	2	0.3	0	0.0

<sup>1</sup> See Glossary of terms for definitions.

**Table 10A.—Analysis of Methods of Disposition of Amendment of Certification  
And Unit Clarification Cases Closed, Fiscal Year 2005<sup>1</sup>**

	AC	UC
Total, all.....	10	138
Certification amended or unit clarified.....	4	15
Before hearing.....	4	3
By Regional Director's decision.....	4	3
By Board decision.....	0	0
After hearing.....	0	12
By Regional Director's decision.....	0	12
By Board decision.....	0	0
Dismissed.....	0	16
Before hearing.....	0	7
By Regional Director's decision.....	0	7
By Board decision.....	0	0
After hearing.....	0	9
By Regional Director's decision.....	0	8
By Board decision.....	0	1
Withdrawn.....	6	107
Before hearing.....	1	105
After hearing.....	5	2

<sup>1</sup> See Glossary of terms for definitions.

**Table 11.—Types of Elections Resulting in Certification in Cases Closed, Fiscal Year 2005<sup>1</sup>**

Type of case	Type of election					
	Total	Consent	Stipulated	Board-directed	Regional Director-directed <sup>2</sup>	Expedited elections under 8(b)(7)(C)
All types, total:						
Elections.....	32,669	93	2,201	0	374	1
Eligible voters.....	184,566	7,591	133,700	0	43,269	6
Valid votes.....	151,713	5,502	111,297	0	34,908	6
RC cases:						
Elections.....	2,180	83	1,784	0	313	0
Eligible voters.....	149,109	7,138	103,662	0	38,309	0
Valid votes.....	123,455	5,131	87,323	0	31,001	0
RM cases:						
Elections.....	51	1	41	0	8	1
Eligible voters.....	1,609	8	1,500	0	95	6
Valid votes.....	1,329	6	1,228	0	89	6
RD cases:						
Elections.....	384	7	334	0	43	0
Eligible voters.....	27,734	227	23,349	0	4,158	0
Valid votes.....	22,964	197	19,492	0	3,275	0
UD cases:						
Elections.....	54	2	42	0	10	--
Eligible voters.....	6,114	218	5,189	0	707	--
Valid votes.....	3,965	168	3,254	0	543	--

<sup>1</sup> See Glossary of terms for definitions.<sup>2</sup> Cases where election is held pursuant to a decision and direction by the Board.<sup>3</sup> Due to technical difficulties, data discrepancies exceed 1 percent but are less than 3 percent in case totals for Tables 11, 15B, 15C, and 16.

**Table 11A.—Analysis of Elections Conducted in Representation Cases Closed, Fiscal Year 2005<sup>1</sup>**

Type of election	All R elections				RC elections				RM elections				RD elections			
	Elections conducted				Elections conducted				Elections conducted				Elections conducted			
	Total elections	With-drawn or dis-missed before certification	Result-ing in a rerun or runoff	Result-ing in certification	Total elections	With-drawn or dis-missed before certification	Result-ing in a rerun or runoff	Result-ing in certification	Total elections	With-drawn or dis-missed before certification	Result-ing in a rerun or runoff	Result-ing in certification	Total elections	With-drawn or dis-missed before certification	Result-ing in a rerun or runoff	Result-ing in certification
All representation elections.....	2,745	61	72	2,612	2,298	58	63	2,177	51	0	0	51	396	3	9	384
Rerun required.....	--	--	66	--	--	--	57	--	--	--	0	--	--	--	9	--
Runoff required.....	--	--	6	--	--	--	6	--	--	--	0	--	--	--	0	--
Consent elections.....	92	0	1	91	84	0	1	83	1	0	0	1	7	0	0	7
Rerun required.....	--	--	1	--	--	--	1	--	--	--	0	--	--	--	0	--
Runoff required.....	--	--	0	--	--	--	0	--	--	--	0	--	--	--	0	--
Stipulated elections.....	2,228	39	32	2,157	1,844	36	26	1,782	41	0	0	41	343	3	6	334
Rerun required.....	--	--	31	--	--	--	25	--	--	--	0	--	--	--	6	--
Runoff required.....	--	--	1	--	--	--	1	--	--	--	0	--	--	--	0	--
Regional Director-directed.....	424	22	39	363	370	22	36	312	8	0	0	8	46	0	3	43
Rerun required.....	--	--	34	--	--	--	31	--	--	--	0	--	--	--	3	--
Runoff required.....	--	--	5	--	--	--	5	--	--	--	0	--	--	--	0	--
Board-directed.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Rerun required.....	--	--	0	--	--	--	--	--	--	--	--	--	--	--	--	--
Runoff required.....	--	--	0	--	--	--	--	--	--	--	--	--	--	--	--	--
Expedited—Sec. 8(b)(7)(C).....	1	0	0	1	0	0	0	0	1	0	0	1	0	0	0	0
Rerun required.....	--	--	0	--	--	--	--	--	--	--	0	--	--	--	--	--
Runoff required.....	--	--	0	--	--	--	--	--	--	--	0	--	--	--	--	--

<sup>1</sup> The total of representation elections resulting in certification excludes election held in UD cases which are included in the total in Table 11.

**Table 11B.—Representation Elections in Which Objections and/or Determinative Challenges Were Ruled On in Cases Closed  
Fiscal Year 2005**

Type of election/case	Total elections	Objections only		Challenges only		Objections and challenges		Total objections <sup>1</sup>		Total challenges <sup>2</sup>	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
All representation elections.....	2,753	139	5.0	33	1.2	6	0.2	145	5.3	39	1.4
By type of cases:											
In RC cases.....	2,305	128	5.6	26	1.1	6	0.3	134	5.8	32	1.4
In RM cases.....	51	0	0.0	2	3.9	0	0.0	0	0.0	2	3.9
In RD cases.....	397	11	2.8	5	1.3	0	0.0	11	2.8	5	1.3
By type of election:											
Consent elections.....	92	3	3.3	1	1.1	0	0.0	3	3.3	1	1.1
Stipulated elections.....	2,234	37	1.7	19	0.9	1	0.0	38	1.7	20	0.9
Expedited elections.....	1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Regional Director-directed elections.....	426	99	23.2	13	3.1	5	1.2	104	24.4	18	4.2
Board-directed elections.....	0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0

<sup>1</sup> Number of elections in which objections were ruled on, regardless of number of allegations in each election.

<sup>2</sup> Number of elections in which challenges were ruled on, regardless of individual ballots challenged in each election.

**Table 11C.—Objections Filed in Representation Cases Closed, by Party Filing  
Fiscal Year 2005<sup>1</sup>**

Type of election/case	Total		By employer		By union		By both parties <sup>2</sup>	
	Number	Percent by type	Number	Percent by type	Number	Percent by type	Number	Percent by type
All representation elections.....	237	100.0	79	33.3	151	63.7	5	2.1
By type of case:								
RC cases.....	217	100.0	74	34.1	137	63.1	4	1.8
RM cases.....	2	100.0	1	50.0	1	50.0	0	0.0
RD cases.....	18	100.0	4	22.2	13	72.2	1	5.6
By type of election:								
Consent elections.....	4	100.0	0	0.0	4	100.0	0	0.0
Stipulated elections.....	119	100.0	29	24.4	87	73.1	2	1.7
Expedited elections.....	0	0.0	0	0.0	0	0.0	0	0.0
Regional Director-directed elections....	114	100.0	50	43.9	60	52.6	3	2.6
Board-directed elections.....	0	0.0	0	0.0	0	0.0	0	0.0

<sup>1</sup> See Glossary of terms for definitions.

<sup>2</sup> Objections filed by more than one party in the same cases are counted as one.

**Table 11D.—Disposition of Objections in Representation Cases Closed,  
Fiscal Year 2005<sup>1</sup>**

Type of election/case	Objections filed	Objections with- drawn	Objections ruled upon	Overruled		Sustained	
				Number	Percent of total ruled upon	Number	Percent of total ruled upon
All representation elections.....	237	93	144	133	92.4	11	7.6
By type of case:							
RC cases.....	217	84	133	123	92.5	10	7.5
RM cases.....	2	2	0	0	0.0	0	0.0
RD cases.....	18	7	11	10	90.9	1	9.1
By type of election:							
Consent elections.....	4	1	3	2	66.7	1	33.3
Stipulated elections.....	119	81	38	38	100.0	0	0.0
Expedited elections.....	0	0	0	0	0.0	0	0.0
Regional Director-directed elections.....	114	11	103	93	90.3	10	9.7
Board-directed elections.....	0	0	0	0	0.0	0	0.0

<sup>1</sup> See Glossary of terms for definitions.

**Table 11E.—Results of Rerun Elections Held in Representation Cases Closed,  
Fiscal Year 2005<sup>1</sup>**

Type of election/case	Total rerun elections		Union certified		No Union chosen		Outcome of original election reversed	
	Number	Percent by type	Number	Percent by type	Number	Percent by type	Number	Percent by type
All representation elections.....	23	100.0	10	43.5	13	56.5	6	26.1
By type of case:								
RC cases.....	19	100.0	10	52.6	9	47.4	6	31.6
RM cases.....	0	0.0	0	0.0	0	0.0	0	0.0
RD cases.....	4	100.0	0	0.0	4	100.0	0	0.0
By type of election:								
Consent elections.....	1	100.0	1	100.0	0	0.0	1	100.0
Stipulated elections.....	12	100.0	4	33.3	8	66.7	2	16.7
Expedited elections.....	0	0.0	0	0.0	0	0.0	0	0.0
Regional Director-directed elections....	10	100.0	5	50.0	5	50.0	3	30.0
Board-directed elections.....	0	0.0	0	0.0	0	0.0	0	0.0

<sup>1</sup> Includes only final rerun elections, i.e., those resulting in certification. See Glossary of terms for definitions.

**Table 12.—Results of Union-Shop Deauthorization Polls in Cases Closed, Fiscal Year 2005<sup>1</sup>**

Affiliation of union holding union-shop contract	Number of polls					Employees involved (number eligible to vote)					Valid votes cast			
	Total	Resulting in deauthorization		Resulting in continued authorization		Total eligible	In polls				Total	Percent of total eligible	Cast for deauthorization	
							Resulting in deauthorization		Resulting in continued authorization				Number	Percent of total eligible
		Number	Percent of total	Number	Percent of total									
		Number	Percent of total	Number	Percent of total									
Total.....	59	16	27.1	43	72.9	6,245	1,768	28.3	4,477	71.7	4,089	65.5	1,291	20.7
AFL-CIO unions.....	44	11	25.0	33	75.0	4,755	1,303	27.4	3,452	72.6	3,118	65.6	939	19.7
Other national unions.....	9	4	44.4	5	55.6	774	264	34.1	510	65.9	529	68.3	203	26.2
Other local unions.....	6	1	16.7	5	83.3	716	201	28.1	515	71.9	442	61.7	149	20.8

<sup>1</sup> Sec. 8(a)(3) of the Act requires that to revoke a union-shop agreement a majority of the employees eligible to vote must vote in favor of deauthorization.

**Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 2005<sup>1</sup>**

Participating unions	Total elections <sup>2</sup>	Elections won by unions					Elections in which no representative chosen	Employees eligible to vote					In elections where no representative chosen
		Percent won	Total won	AFL-CIO unions	Other national unions	Other local unions		Total	In elections won	In units won by			
										AFL-CIO unions	Other national unions	Other local unions	
A. All representation elections													
AFL-CIO.....	2,275	53.8	1,224	1,224	--	--	1,051	148,598	63,288	63,288	--	--	85,310
Other local unions.....	108	62.0	67	--	1	66	41	5,480	2,505	--	46	2,459	2,975
Other national unions.....	86	61.6	53	--	53	--	33	5,479	3,513	--	3,513	--	1,966
1-union elections.....	2,469	54.4	1,344	1,224	54	66	1,125	159,557	69,306	63,288	3,559	2,459	90,251
AFL-CIO v. AFL-CIO.....	90	82.2	74	74	--	--	16	4,487	3,306	3,306	--	--	1,181
AFL-CIO v. Local.....	37	97.3	36	18	--	18	1	7,874	7,868	3,143	--	4,725	6
AFL-CIO v. National.....	9	100.0	9	2	7	--	0	1,386	1,386	58	1,328	--	0
Local v. Local.....	9	88.9	8	--	--	8	1	1,030	998	--	--	998	32
National v. Local.....	20	95.0	19	--	8	11	1	1,688	1,638	--	886	752	50
National v. National.....	8	87.5	7	--	7	--	1	603	587	--	587	--	16
2-union elections.....	173	88.4	153	94	22	37	20	17,068	15,783	6,507	2,801	6,475	1,285
AFL-CIO v. AFL-CIO v. AFL-CIO..	2	100.0	2	2	--	--	0	188	188	188	--	--	0
AFL-CIO v. AFL-CIO v. Local.....	1	100.0	1	1	--	0	0	27	27	27	--	0	0
AFL-CIO v. Local v. Local.....	1	100.0	1	0	--	1	0	5	5	0	--	5	0
National v. Local v. Local.....	1	100.0	1	--	0	1	0	22	22	--	0	22	0
National v. National v. National.....	2	100.0	2	--	2	--	0	52	52	--	52	--	0
3 (or more)-union elections.....	7	100.0	7	3	2	2	0	294	294	215	52	27	0
Total representation elections.....	2,649	56.8	1,504	1,321	78	105	1,145	176,919	85,383	70,010	6,412	8,961	91,536
B. Elections in RC cases													
AFL-CIO	1,890	58.1	1,099	1,099	--	--	791	124,132	50,126	50,126	--	--	74,006
Other local unions.....	90	67.8	61	--	1	60	29	4,817	2,055	--	46	2,009	2,762
Other national unions.....	73	67.1	49	--	49	--	24	4,522	2,974	--	2,974	--	1,548

<sup>1</sup> See Glossary of terms for definitions.

<sup>2</sup> Includes each unit in which a choice regarding collective-bargaining agent was made, for example, there may have been more than one election in a single case, or several cases may have been involved.

**Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 2005<sup>1</sup>—Continued**

Participating unions	Total elections <sup>2</sup>	Elections won by unions					Elections in which no representative chosen	Employees eligible to vote					In elections where no representative chosen
		Percent won	Total won	AFL-CIO unions	Other national unions	Other local unions		Total	In elections won	In units won by			
										AFL-CIO unions	Other national unions	Other local unions	
1-union elections.....	2,053	58.9	1,209	1,099	50	60	844	133,471	55,155	50,126	3,020	2,009	78,316
National v. National.....	8	87.5	7	--	7	--	1	603	587	--	587	--	16
National v. Local.....	14	92.9	13	--	5	8	1	1,551	1,501	--	856	645	50
Local v. Local.....	7	85.7	6	--	--	6	1	658	626	--	--	626	32
AFL-CIO v. National.....	8	100.0	8	2	6	--	0	1,016	1,016	58	958	--	0
AFL-CIO v. AFL-CIO.....	84	84.5	71	71	--	--	13	3,901	3,027	3,027	--	--	874
AFL-CIO v. Local.....	34	97.1	33	16	--	17	1	7,337	7,331	2,697	--	4,634	6
2-union elections.....	155	89.0	138	89	18	31	17	15,066	14,088	5,782	2,401	5,905	978
AFL-CIO v. Local v. Local.....	1	100.0	1	0	--	1	0	5	5	0	--	5	0
National v. Local v. Local.....	1	100.0	1	--	0	1	0	22	22	--	0	22	0
National v. National v. National.....	2	100.0	2	--	2	--	0	52	52	--	52	--	0
AFL-CIO v. AFL-CIO v. AFL-CIO..	2	100.0	2	2	--	--	0	188	188	188	--	--	0
AFL-CIO v. AFL-CIO v. Local.....	1	100.0	1	1	--	0	0	27	27	27	--	0	0
3 (or more)-union elections.....	7	100.0	7	3	2	2	0	294	294	215	52	27	0
Total RC elections.....	2,215	61.1	1,354	1,191	70	93	861	148,831	69,537	56,123	5,473	7,941	79,294
C. Elections in RM cases													
AFL-CIO	38	15.8	6	6	--	--	32	752	125	125	--	--	627
Other local unions.....	1	100.0	1	--	--	1	0	299	299	--	--	299	0
Other national unions.....	2	50.0	1	--	1	--	1	265	250	--	250	--	15
1-union elections.....	41	19.5	8	6	1	1	33	1,316	674	125	250	299	642
National v. Local.....	6	100.0	6	--	3	3	0	137	137	--	30	107	0
AFL-CIO v. AFL-CIO.....	4	50.0	2	2	--	--	2	131	124	124	--	--	7

<sup>1</sup> See Glossary of terms for definitions.

<sup>2</sup> Includes each unit in which a choice regarding collective-bargaining agent was made, for example, there may have been more than one election in a single case, or several cases may have been involved.

**Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 2005<sup>1</sup>—Continued**

Participating unions	Total elections <sup>2</sup>	Elections won by unions					Elections in which no representative chosen	Employees eligible to vote					In elections where no representative chosen
		Percent won	Total won	AFL-CIO unions	Other national unions	Other local unions		Total	In elections won	In units won by			
										AFL-CIO unions	Other national unions	Other local unions	
AFL-CIO v. Local.....	1	100.0	1	1	--	0	0	38	38	38	--	0	0
2-union elections.....	11	81.8	9	3	3	3	2	306	299	162	30	107	7
Total RM elections.....	52	32.7	17	9	4	4	35	1,622	973	287	280	406	649
D. Elections in RD cases													
AFL-CIO	347	34.3	119	119	--	--	228	23,714	13,037	13,037	--	--	10,677
Other national unions.....	11	27.3	3	--	3	--	8	692	289	--	289	--	403
Other local unions.....	17	29.4	5	--	--	5	12	364	151	--	--	151	213
1-union elections.....	375	33.9	127	119	3	5	248	24,770	13,477	13,037	289	151	11,293
AFL-CIO v. National.....	1	100.0	1	0	1	--	0	370	370	0	370	--	0
Local v. Local.....	2	100.0	2	--	--	2	0	372	372	--	--	372	0
AFL-CIO v. AFL-CIO.....	2	50.0	1	1	--	--	1	455	155	155	--	--	300
AFL-CIO v. Local.....	2	100.0	2	1	--	1	0	499	499	408	--	91	0
2-union elections.....	7	85.7	6	2	1	3	1	1,696	1,396	563	370	463	300
Total RD elections.....	382	34.8	133	121	4	8	249	26,466	14,873	13,600	659	614	11,593

<sup>1</sup> See Glossary of terms for definitions.

<sup>2</sup> Includes each unit in which a choice regarding collective-bargaining agent was made, for example, there may have been more than one election in a single case, or several cases may have been involved.

**Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 2005<sup>1</sup>**

Participating unions	Total valid votes cast	Valid votes cast in elections won					Valid votes cast in elections lost				
		Votes for unions				Total votes for no union	Votes for unions				Total votes for no union
		Total	AFL-CIO unions	Other national unions	Other local unions		Total	AFL-CIO unions	Other national unions	Other local unions	
A. All representation elections											
AFL-CIO.....	125,108	35,130	35,130	--	--	15,180	25,908	25,908	--	--	48,890
Other local unions.....	4,276	1,543	--	--	1,543	410	789	--	--	789	1,534
Other national unions.....	3,835	1,733	--	1,733	--	554	523	--	523	--	1,025
1-union elections.....	133,219	38,406	35,130	1,733	1,543	16,144	27,220	25,908	523	789	51,449
AFL-CIO v. AFL-CIO.....	3,455	2,391	2,391	--	--	87	389	389	--	--	588
AFL-CIO v. Local.....	6,475	5,598	1,873	--	3,725	877	0	0	--	0	0
AFL-CIO v. National.....	1,096	974	225	749	--	122	0	0	0	--	0
Local v. Local.....	758	710	--	--	710	19	4	--	--	4	25
National v. Local.....	1,159	1,058	--	481	577	53	12	--	0	12	36
National v. National.....	454	398	--	398	--	40	1	--	1	--	15
2-union elections.....	13,397	11,129	4,489	1,628	5,012	1,198	406	389	1	16	664
AFL-CIO v. AFL-CIO v. AFL-CIO.....	121	106	106	--	--	15	0	0	--	--	0
AFL-CIO v. AFL-CIO v. Local.....	23	23	20	--	3	0	0	0	--	0	0
AFL-CIO v. Local v. Local.....	5	5	0	--	5	0	0	0	--	0	0
National v. Local v. Local.....	13	13	--	0	13	0	0	--	0	0	0
National v. National v. National.....	44	43	--	43	--	1	0	--	0	--	0
3 (or more)-union elections.....	206	190	126	43	21	16	0	0	0	0	0
Total representation elections.....	146,822	49,725	39,745	3,404	6,576	17,358	27,626	26,297	524	805	52,113
B. Elections in RC cases											
AFL-CIO.....	104,727	27,945	27,945	--	--	11,361	22,697	22,697	--	--	42,724
Other local unions.....	3,771	1,267	--	--	1,267	373	736	--	--	736	1,395
Other national unions.....	3,142	1,499	--	1,499	--	422	407	--	407	--	814
1-union elections.....	111,640	30,711	27,945	1,499	1,267	12,156	23,840	22,697	407	736	44,933
National v. National.....	454	398	--	398	--	40	1	--	1	--	15
National v. Local.....	1,061	962	--	449	513	51	12	--	0	12	36
Local v. Local.....	378	340	--	--	340	9	4	--	--	4	25
AFL-CIO v. National.....	812	697	95	602	0	115	0	--	--	--	--

<sup>1</sup> See Glossary of terms for definition.

**Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 2005<sup>1</sup>—Continued**

Participating unions	Total valid votes cast	Valid votes cast in elections won					Valid votes cast in elections lost				
		Votes for unions				Total votes for no union	Votes for unions				Total votes for no union
		Total	AFL-CIO unions	Other national unions	Other local unions		Total	AFL-CIO unions	Other national unions	Other local unions	
AFL-CIO v. AFL-CIO.....	3,016	2,158	2,158	--	--	76	319	319	--	--	463
AFL-CIO v. Local.....	5,979	5,153	1,644	--	3,509	826	0	0	--	0	0
2-union elections.....	11,700	9,708	3,897	1,449	4,362	1,117	336	319	1	16	539
AFL-CIO v. Local v. Local.....	5	5	0	0	5	0	0	--	--	--	--
National v. Local v. Local.....	13	13	0	0	13	0	0	--	--	--	--
National v. National v. National.....	44	43	0	43	0	1	0	--	--	--	--
AFL-CIO v. AFL-CIO v. AFL-CIO.....	121	106	106	0	0	15	0	--	--	--	--
AFL-CIO v. AFL-CIO v. Local.....	23	23	20	0	3	0	0	--	--	--	--
3 (or more)-union elections.....	206	190	126	43	21	16	0	0	0	0	0
Total RC elections.....	123,546	40,609	31,968	2,991	5,650	13,289	24,176	23,016	408	752	45,472
C. Elections in RM cases											
AFL-CIO.....	676	78	78	--	--	43	137	137	--	--	418
Other local unions.....	223	212	0	0	212	11	0	--	--	--	--
Other national unions.....	188	99	--	99	--	74	5	--	5	--	10
1-union elections.....	1,087	389	78	99	212	128	142	137	5	0	428
National v. Local.....	98	96	0	32	64	2	0	--	--	--	--
AFL-CIO v. AFL-CIO.....	114	109	109	--	--	1	4	4	--	--	0
AFL-CIO v. Local.....	38	26	26	0	0	12	0	--	--	--	--
2-union elections.....	250	231	135	32	64	15	4	4	0	0	0
Total RM elections.....	1,337	620	213	131	276	143	146	141	5	0	428
D. Elections in RD cases											
AFL-CIO.....	19,705	7,107	7,107	--	--	3,776	3,074	3,074	--	--	5,748
Other national unions.....	505	135	--	135	--	58	111	--	111	--	201
Other local unions.....	282	64	--	--	64	26	53	--	--	53	139
1-union elections.....	20,492	7,306	7,107	135	64	3,860	3,238	3,074	111	53	6,088
AFL-CIO v. National.....	284	277	130	147	0	7	0	--	--	--	--
Local v. Local.....	380	370	0	0	370	10	0	--	--	--	--
AFL-CIO v. AFL-CIO.....	325	124	124	--	--	10	66	66	--	--	125

<sup>1</sup> See Glossary of terms for definition.

**Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 2005<sup>1</sup>—Continued**

Participating unions	Total valid votes cast	Valid votes cast in elections won					Valid votes cast in elections lost				
		Votes for unions				Total votes for no union	Votes for unions				Total votes for no union
		Total	AFL-CIO unions	Other national unions	Other local unions		Total	AFL-CIO unions	Other national unions	Other local unions	
AFL-CIO v. Local.....	458	419	203	0	216	39	0	--	--	--	--
2-union elections.....	1,447	1,190	457	147	586	66	66	66	0	0	125
Total RD elections.....	21,939	8,496	7,564	282	650	3,926	3,304	3,140	111	53	6,213

<sup>1</sup> See Glossary of terms for definition.

**Table 15A.--Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2005**

Division and State <sup>1</sup>	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Illinois.....	152	73	67	5	1	79	8802	7,783	4,115	3,488	598	29	3,668	3521
Indiana.....	41	21	19	2	0	20	2697	2,413	1,228	1,134	94	0	1,185	1209
Michigan.....	124	61	57	3	1	63	6437	5,443	2,881	2,653	166	62	2,562	3069
Ohio.....	128	72	68	3	1	56	6556	5,674	2,942	2,864	69	9	2,732	2896
Wisconsin.....	47	21	21	0	0	26	1783	1,364	646	598	43	5	718	985
East North Central.....	492	248	232	13	3	244	26275	22,677	11,812	10,737	970	105	10,865	11680
Alabama.....	24	19	17	2	0	5	1086	1,124	799	479	320	0	325	878
Kentucky.....	26	12	12	0	0	14	2157	1,867	772	772	0	0	1,095	465
Mississippi.....	11	6	6	0	0	5	2110	1,949	478	466	0	12	1,471	285
Tennessee.....	21	10	7	3	0	11	2428	2,166	1,467	1,163	127	177	699	1366
East South Central.....	82	47	42	5	0	35	7781	7,106	3,516	2,880	447	189	3,590	2994
New Jersey.....	139	87	71	11	5	52	10022	7,954	4,462	3,303	668	491	3,492	5254
New York.....	314	200	169	10	21	114	18241	13,781	7,634	6,760	239	635	6,147	9190
Pennsylvania.....	165	85	79	0	6	80	9759	8,057	4,226	3,512	53	661	3,831	3700
Middle Atlantic.....	618	372	319	21	32	246	38022	29,792	16,322	13,575	960	1,787	13,470	18144
Arizona.....	25	15	14	1	0	10	1646	1,493	761	706	55	0	732	396
Colorado.....	33	16	13	2	1	17	1178	1,114	526	411	86	29	588	432
Idaho.....	14	5	5	0	0	9	394	342	114	114	0	0	228	19
Montana.....	13	2	1	0	1	11	212	187	70	61	0	9	117	25
Nevada.....	23	11	10	1	0	12	2110	1,538	841	780	61	0	697	1289
New Mexico.....	20	8	7	1	0	12	1050	856	389	325	64	0	467	467
Utah.....	6	5	4	0	1	1	58	69	46	37	0	9	23	37
Wyoming.....	7	4	4	0	0	3	308	305	114	114	0	0	191	14
Mountain.....	141	66	58	5	3	75	6956	5,904	2,861	2,548	266	47	3,043	2679
Connecticut.....	42	24	20	1	3	18	2306	1,969	1,325	929	12	384	644	1578
Maine.....	7	4	2	1	1	3	381	355	160	137	15	8	195	67

<sup>1</sup> The States are grouped according to the method used by the Bureau of the Census, U.S. Department of Commerce.

**Table 15A.--Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2005—Continued**

Division and State <sup>1</sup>	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Massachusetts.....	75	41	39	0	2	34	4748	3,989	2,527	1,905	0	622	1,462	3377
New Hampshire.....	13	7	6	0	1	6	450	398	226	161	34	31	172	216
Rhode Island.....	16	11	5	2	4	5	781	702	432	285	38	109	270	601
Vermont.....	4	4	4	0	0	0	166	151	109	109	0	0	42	166
New England.....	157	91	76	4	11	66	8832	7,564	4,779	3,526	99	1,154	2,785	6005
Puerto Rico.....	45	29	18	0	11	16	2521	2,032	1,107	619	0	488	925	1388
Virgin Islands.....	4	2	0	0	2	2	352	150	131	1	0	130	19	329
Outlying Areas.....	49	31	18	0	13	18	2873	2,182	1,238	620	0	618	944	1717
Alaska.....	20	11	11	0	0	9	713	669	329	325	4	0	340	319
American Samoa.....	1	1	1	0	0	0	7	7	7	7	0	0	0	7
California.....	263	147	126	8	13	116	23220	18,020	10,429	7,543	490	2,396	7,591	14202
Federated States of Micronesia.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Guam.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Hawaii.....	29	14	11	2	1	15	1314	1,053	493	391	38	64	560	744
Marshall Islands.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Northern Mariana Islands.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Oregon.....	51	26	24	1	1	25	2095	1,601	878	810	20	48	723	1230
Palau.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Washington.....	169	126	124	2	0	43	8951	5,958	3,686	3,680	6	0	2,272	5803
Pacific.....	533	325	297	13	15	208	36300	27,308	15,822	12,756	558	2,508	11,486	22305
Delaware.....	15	9	9	0	0	6	724	665	426	365	0	61	239	565
District Of Columbia.....	22	21	9	3	9	1	2357	1,454	977	589	146	242	477	2303
Florida.....	68	41	32	4	5	27	12861	11,214	4,621	4,417	116	88	6,593	3767
Georgia.....	28	12	11	0	1	16	3496	3,100	1,373	1,322	0	51	1,727	1103
Maryland.....	61	32	22	5	5	29	3839	3,168	1,560	1,344	49	167	1,608	1953

<sup>1</sup> The States are grouped according to the method used by the Bureau of the Census, U.S. Department of Commerce.

**Table 15A.--Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2005—Continued**

Division and State <sup>1</sup>	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
North Carolina.....	16	7	7	0	0	9	4687	4,341	1,911	1,899	12	0	2,430	1746
South Carolina.....	11	6	5	1	0	5	1022	832	612	198	221	193	220	755
Virginia.....	30	18	16	2	0	12	1657	1,515	788	755	33	0	727	672
West Virginia.....	28	9	9	0	0	19	2326	2,133	826	825	1	0	1,307	306
South Atlantic.....	279	155	120	15	20	124	32969	28,422	13,094	11,714	578	802	15,328	13170
Iowa.....	36	19	18	1	0	17	4794	4,494	1,815	1,797	18	0	2,679	373
Kansas.....	18	13	11	1	1	5	2799	2,325	1,208	1,181	10	17	1,117	2110
Minnesota.....	69	33	32	0	1	36	2647	2,260	1,134	1,087	0	47	1,126	1181
Missouri.....	50	28	24	2	2	22	1929	1,685	878	734	88	56	807	918
Nebraska.....	13	7	7	0	0	6	484	447	249	247	0	2	198	265
North Dakota.....	5	4	3	1	0	1	176	139	71	71	0	0	68	139
South Dakota.....	3	0	0	0	0	3	311	288	110	110	0	0	178	0
West North Central.....	194	104	95	5	4	90	13140	11,638	5,465	5,227	116	122	6,173	4986
Arkansas.....	13	4	3	1	0	9	1691	1,488	636	571	65	0	852	193
Louisiana.....	22	12	10	2	0	10	1773	1,589	817	781	36	0	772	771
Oklahoma.....	20	12	11	0	1	8	835	761	378	366	2	10	383	379
Texas.....	75	47	39	5	3	28	3042	2,580	1,264	1,191	34	39	1,316	1207
West South Central.....	130	75	63	8	4	55	7341	6,418	3,095	2,909	137	49	3,323	2550
Total, all States and areas.....	2,675	1,514	1,320	89	105	1,161	180489	149,011	78,004	66,492	4,131	7,381	71,007	86230

<sup>1</sup> The States are grouped according to the method used by the Bureau of the Census, U.S. Department of Commerce.

**Table 15B.--Geographic Distribution of Collective-Bargaining Elections<sup>1</sup> Held in Cases Closed, Fiscal Year 2005**

Division and State <sup>2</sup>	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Illinois.....	123	66	61	4	1	57	7167	6,363	3,378	2,790	571	17	2,985	2653
Indiana.....	33	18	16	2	0	15	2142	1,925	885	791	94	0	1,040	783
Michigan.....	104	56	53	2	1	48	5252	4,488	2,436	2,269	105	62	2,052	2721
Ohio.....	107	66	62	3	1	41	5993	5,147	2,719	2,641	69	9	2,428	2683
Wisconsin.....	29	13	13	0	0	16	675	533	219	171	43	5	314	201
East North Central.....	396	219	205	11	3	177	21229	18,456	9,637	8,662	882	93	8,819	9041
Alabama.....	23	18	16	2	0	5	1054	1,097	783	463	320	0	314	846
Kentucky.....	21	9	9	0	0	12	1668	1,526	549	549	0	0	977	142
Mississippi.....	9	5	5	0	0	4	2013	1,865	435	423	0	12	1,430	222
Tennessee.....	13	6	3	3	0	7	1614	1,394	918	791	127	0	476	923
East South Central.....	66	38	33	5	0	28	6349	5,882	2,685	2,226	447	12	3,197	2133
New Jersey.....	127	82	67	10	5	45	9466	7,514	4,152	3,048	613	491	3,362	4864
New York.....	282	189	160	10	19	93	16513	12,520	7,094	6,287	218	589	5,426	8370
Pennsylvania.....	149	78	73	0	5	71	8987	7,369	3,893	3,277	0	616	3,476	3405
Middle Atlantic.....	558	349	300	20	29	209	34966	27,403	15,139	12,612	831	1,696	12,264	16639
Arizona.....	20	14	13	1	0	6	965	876	510	455	55	0	366	382
Colorado.....	27	14	11	2	1	13	781	770	360	245	86	29	410	245
Idaho.....	12	5	5	0	0	7	329	309	105	105	0	0	204	19
Montana.....	10	2	1	0	1	8	175	153	61	52	0	9	92	25
Nevada.....	21	10	9	1	0	11	1899	1,373	708	647	61	0	665	1086
New Mexico.....	15	7	6	1	0	8	502	439	215	151	64	0	224	200
Utah.....	6	5	4	0	1	1	58	69	46	37	0	9	23	37
Wyoming.....	5	4	4	0	0	1	287	285	111	111	0	0	174	14
Mountain.....	116	61	53	5	3	55	4996	4,274	2,116	1,803	266	47	2,158	2008
Connecticut.....	38	23	19	1	3	15	2211	1,887	1,290	894	12	384	597	1520
Maine.....	6	4	2	1	1	2	175	158	74	51	15	8	84	67
Massachusetts.....	64	38	36	0	2	26	4291	3,599	2,319	1,704	0	615	1,280	3120
New Hampshire.....	13	7	6	0	1	6	450	398	226	161	34	31	172	216

<sup>1</sup> Does not include decertification (RD) elections.

<sup>2</sup> The States are grouped according to the method used by the Bureau of the Census, U.S. Department of Commerce.

**Table 15B.--Geographic Distribution of Collective-Bargaining Elections<sup>1</sup> Held in Cases Closed, Fiscal Year 2005—Continued**

Division and State <sup>2</sup>	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Rhode Island.....	16	11	5	2	4	5	781	702	432	285	38	109	270	601
Vermont.....	2	2	2	0	0	0	7	7	6	6	0	0	1	7
New England.....	139	85	70	4	11	54	7915	6,751	4,347	3,101	99	1,147	2,404	5531
Puerto Rico.....	43	29	18	0	11	14	2502	2,014	1,103	619	0	484	911	1388
Virgin Islands.....	2	2	0	0	2	0	329	130	126	0	0	126	4	329
Outlying Areas.....	45	31	18	0	13	14	2831	2,144	1,229	619	0	610	915	1717
Alaska.....	17	10	10	0	0	7	473	434	229	225	4	0	205	303
American Samoa.....	1	1	1	0	0	0	7	7	7	7	0	0	0	7
California.....	224	134	118	7	9	90	19176	14,963	8,625	6,293	331	2,001	6,338	12426
Federated States of Micronesia.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Guam.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Hawaii.....	24	13	10	2	1	11	1208	968	466	367	35	64	502	734
Marshall Islands.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Northern Mariana Islands.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Oregon.....	41	22	20	1	1	19	1770	1,325	750	682	20	48	575	1068
Palau.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Washington.....	153	120	119	1	0	33	6526	4,474	3,238	3,232	6	0	1,236	5119
Pacific.....	460	300	278	11	11	160	29160	22,171	13,315	10,806	396	2,113	8,856	19657
Delaware.....	12	7	7	0	0	5	468	421	302	241	0	61	119	371
District Of Columbia.....	21	20	8	3	9	1	1951	1,215	828	440	146	242	387	1897
Florida.....	57	33	26	3	4	24	10691	9,250	3,477	3,278	116	83	5,773	1914
Georgia.....	27	12	11	0	1	15	3428	3,037	1,345	1,294	0	51	1,692	1103
Maryland.....	52	28	18	5	5	24	3407	2,801	1,368	1,160	49	159	1,433	1663
North Carolina.....	15	7	7	0	0	8	4665	4,319	1,900	1,888	12	0	2,419	1746
South Carolina.....	8	5	4	1	0	3	857	726	574	165	216	193	152	702
Virginia.....	26	16	14	2	0	10	1301	1,209	572	539	33	0	637	349
West Virginia.....	20	7	7	0	0	13	1831	1,661	608	608	0	0	1,053	228
South Atlantic.....	238	135	102	14	19	103	28599	24,639	10,974	9,613	572	789	13,665	9973

<sup>1</sup> Does not include decertification (RD) elections.

<sup>2</sup> The States are grouped according to the method used by the Bureau of the Census, U.S. Department of Commerce.

**Table 15B.--Geographic Distribution of Collective-Bargaining Elections<sup>1</sup> Held in Cases Closed, Fiscal Year 2005—Continued**

Division and State <sup>2</sup>	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Iowa.....	30	15	14	1	0	15	4584	4,295	1,714	1,696	18	0	2,581	247
Kansas.....	12	10	8	1	1	2	721	682	272	245	10	17	410	166
Minnesota.....	54	27	26	0	1	27	2065	1,797	923	876	0	47	874	927
Missouri.....	41	28	24	2	2	13	1477	1,285	701	565	80	56	584	918
Nebraska.....	10	6	6	0	0	4	156	141	68	66	0	2	73	85
North Dakota.....	4	3	2	1	0	1	99	63	22	22	0	0	41	62
South Dakota.....	3	0	0	0	0	3	311	288	110	110	0	0	178	0
West North Central.....	154	89	80	5	4	65	9413	8,551	3,810	3,580	108	122	4,741	2405
Arkansas.....	13	4	3	1	0	9	1691	1,488	636	571	65	0	852	193
Louisiana.....	20	12	10	2	0	8	1741	1,562	808	772	36	0	754	771
Oklahoma.....	16	11	10	0	1	5	746	671	346	334	2	10	325	371
Texas.....	66	45	37	5	3	21	2775	2,329	1,162	1,089	34	39	1,167	1108
West South Central.....	115	72	60	8	4	43	6953	6,050	2,952	2,766	137	49	3,098	2443
Total, all States and areas.....	2,287	1,379	1,199	83	97	908	152411	126,321	66,204	55,788	3,738	6,678	60,117	71547

<sup>1</sup> Does not include decertification (RD) elections.

<sup>2</sup> The States are grouped according to the method used by the Bureau of the Census, U.S. Department of Commerce.

**Table 15C.--Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 2005**

Division and State <sup>1</sup>	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Illinois.....	29	7	6	1	0	22	1635	1,420	737	698	27	12	683	868
Indiana.....	8	3	3	0	0	5	555	488	343	343	0	0	145	426
Michigan.....	20	5	4	1	0	15	1185	955	445	384	61	0	510	348
Ohio.....	21	6	6	0	0	15	563	527	223	223	0	0	304	213
Wisconsin.....	18	8	8	0	0	10	1108	831	427	427	0	0	404	784
East North Central.....	96	29	27	2	0	67	5046	4,221	2,175	2,075	88	12	2,046	2639
Alabama.....	1	1	1	0	0	0	32	27	16	16	0	0	11	32
Kentucky.....	5	3	3	0	0	2	489	341	223	223	0	0	118	323
Mississippi.....	2	1	1	0	0	1	97	84	43	43	0	0	41	63
Tennessee.....	8	4	4	0	0	4	814	772	549	372	0	177	223	443
East South Central.....	16	9	9	0	0	7	1432	1,224	831	654	0	177	393	861
New Jersey.....	12	5	4	1	0	7	556	440	310	255	55	0	130	390
New York.....	32	11	9	0	2	21	1728	1,261	540	473	21	46	721	820
Pennsylvania.....	16	7	6	0	1	9	772	688	333	235	53	45	355	295
Middle Atlantic.....	60	23	19	1	3	37	3056	2,389	1,183	963	129	91	1,206	1505
Arizona.....	5	1	1	0	0	4	681	617	251	251	0	0	366	14
Colorado.....	6	2	2	0	0	4	397	344	166	166	0	0	178	187
Idaho.....	2	0	0	0	0	2	65	33	9	9	0	0	24	0
Montana.....	3	0	0	0	0	3	37	34	9	9	0	0	25	0
Nevada.....	2	1	1	0	0	1	211	165	133	133	0	0	32	203
New Mexico.....	5	1	1	0	0	4	548	417	174	174	0	0	243	267
Utah.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Wyoming.....	2	0	0	0	0	2	21	20	3	3	0	0	17	0
Mountain.....	25	5	5	0	0	20	1960	1,630	745	745	0	0	885	671
Connecticut.....	4	1	1	0	0	3	95	82	35	35	0	0	47	58
Maine.....	1	0	0	0	0	1	206	197	86	86	0	0	111	0
Massachusetts.....	11	3	3	0	0	8	457	390	208	201	0	7	182	257
New Hampshire.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0

<sup>1</sup> The States are grouped according to the method used by the Bureau of the Census, U.S. Department of Commerce.

**Table 15C.--Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 2005—Continued**

Division and State <sup>1</sup>	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Rhode Island.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Vermont.....	2	2	2	0	0	0	159	144	103	103	0	0	41	159
New England.....	18	6	6	0	0	12	917	813	432	425	0	7	381	474
Puerto Rico.....	2	0	0	0	0	2	19	18	4	0	0	4	14	0
Virgin Islands.....	2	0	0	0	0	2	23	20	5	1	0	4	15	0
Outlying Areas.....	4	0	0	0	0	4	42	38	9	1	0	8	29	0
Alaska.....	3	1	1	0	0	2	240	235	100	100	0	0	135	16
American Samoa.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
California.....	39	13	8	1	4	26	4044	3,057	1,804	1,250	159	395	1,253	1776
Federated States of Micronesia.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Guam.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Hawaii.....	5	1	1	0	0	4	106	85	27	24	3	0	58	10
Marshall Islands.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Northern Mariana Islands.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Oregon.....	10	4	4	0	0	6	325	276	128	128	0	0	148	162
Palau.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Washington.....	16	6	5	1	0	10	2425	1,484	448	448	0	0	1,036	684
Pacific.....	73	25	19	2	4	48	7140	5,137	2,507	1,950	162	395	2,630	2648
Delaware.....	3	2	2	0	0	1	256	244	124	124	0	0	120	194
District Of Columbia.....	1	1	1	0	0	0	406	239	149	149	0	0	90	406
Florida.....	11	8	6	1	1	3	2170	1,964	1,144	1,139	0	5	820	1853
Georgia.....	1	0	0	0	0	1	68	63	28	28	0	0	35	0
Maryland.....	9	4	4	0	0	5	432	367	192	184	0	8	175	290
North Carolina.....	1	0	0	0	0	1	22	22	11	11	0	0	11	0
South Carolina.....	3	1	1	0	0	2	165	106	38	33	5	0	68	53
Virginia.....	4	2	2	0	0	2	356	306	216	216	0	0	90	323
West Virginia.....	8	2	2	0	0	6	495	472	218	217	1	0	254	78
South Atlantic.....	41	20	18	1	1	21	4370	3,783	2,120	2,101	6	13	1,663	3197

<sup>1</sup> The States are grouped according to the method used by the Bureau of the Census, U.S. Department of Commerce.

**Table 15C.--Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 2005**

Division and State <sup>1</sup>	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Iowa.....	6	4	4	0	0	2	210	199	101	101	0	0	98	126
Kansas.....	6	3	3	0	0	3	2078	1,643	936	936	0	0	707	1944
Minnesota.....	15	6	6	0	0	9	582	463	211	211	0	0	252	254
Missouri.....	9	0	0	0	0	9	452	400	177	169	8	0	223	0
Nebraska.....	3	1	1	0	0	2	328	306	181	181	0	0	125	180
North Dakota.....	1	1	1	0	0	0	77	76	49	49	0	0	27	77
South Dakota.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
West North Central.....	40	15	15	0	0	25	3727	3,087	1,655	1,647	8	0	1,432	2581
Arkansas.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Louisiana.....	2	0	0	0	0	2	32	27	9	9	0	0	18	0
Oklahoma.....	4	1	1	0	0	3	89	90	32	32	0	0	58	8
Texas.....	9	2	2	0	0	7	267	251	102	102	0	0	149	99
West South Central.....	15	3	3	0	0	12	388	368	143	143	0	0	225	107
Total, all States and areas.....	388	135	121	6	8	253	28078	22,690	11,800	10,704	393	703	10,890	14683

<sup>1</sup> The States are grouped according to the method used by the Bureau of the Census, U.S. Department of Commerce.

**Table 16.--Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2005**

Industrial Group <sup>1</sup>	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Crop Production.....	1	0	0	0	0	1	65	61	29	29	0	0	32	0
Animal Production.....	3	2	1	0	1	1	3459	3,018	2,247	771	0	1,476	771	3406
Fishing, Hunting and Trapping.....	1	1	1	0	0	0	164	152	109	109	0	0	43	164
Support Activities for Agriculture and Forestry.....	2	0	0	0	0	2	40	36	14	14	0	0	22	0
Agriculture, Forestry, Fishing, and Hunting.....	7	3	2	0	1	4	3728	3,267	2,399	923	0	1,476	868	3570
Oil and Gas Extraction.....	2	1	1	0	0	1	36	34	19	19	0	0	15	21
Mining (except Oil and Gas).....	16	5	5	0	0	11	906	800	375	375	0	0	425	387
Support Activities for Mining.....	4	3	3	0	0	1	118	115	69	69	0	0	46	115
Mining.....	22	9	9	0	0	13	1060	949	463	463	0	0	486	523
Utilities.....	63	35	35	0	0	28	2472	2,310	1,227	1,227	0	0	1,083	1087
Building, Developing and General Contracting.....	32	14	12	1	1	18	917	712	295	182	54	59	417	298
Heavy Construction.....	21	9	8	0	1	12	1032	644	384	365	0	19	260	684
Special Trade Contractors.....	343	248	242	0	6	95	7893	5,877	4,277	4,056	26	195	1,600	5500
Construction.....	396	271	262	1	8	125	9842	7,233	4,956	4,603	80	273	2,277	6482
Food Manufacturing.....	74	36	33	2	1	38	15486	12,412	5,038	4,963	30	45	7,374	4663
Beverage and Tobacco Product Manufacturing.....	23	7	6	0	1	16	3662	3,344	1,380	1,133	0	247	1,964	641
Textile Mills.....	3	1	1	0	0	2	716	652	248	248	0	0	404	9
Textile Product Mills.....	3	1	1	0	0	2	420	373	195	195	0	0	178	167
Apparel Manufacturing.....	4	3	3	0	0	1	49	48	26	26	0	0	22	27
31-Manufacturing.....	107	48	44	2	2	59	20333	16,829	6,887	6,565	30	292	9,942	5507

<sup>1</sup> Source: Standard Classification, Statistical Policy Division, Office of Management and Budget, Washington, D.C.

**Table 16.--Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2005—Continued**

Industrial Group <sup>1</sup>	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Wood Product Manufacturing.....	8	2	2	0	0	6	1480	1,366	570	570	0	0	796	317
Paper Manufacturing.....	24	9	8	1	0	15	1439	1,317	674	553	107	14	643	621
Printing and Related Support Activities....	13	7	6	1	0	6	875	807	365	284	69	12	442	196
Petroleum and Coal Products Manufacturing.....	15	7	5	0	2	8	565	361	259	129	0	130	102	456
Chemical Manufacturing.....	30	16	12	3	1	14	1846	1,716	802	676	45	81	914	726
Plastics and Rubber Products Manufacturing.....	27	7	7	0	0	20	5434	5,028	2,154	2,154	0	0	2,874	194
Nonmetallic Mineral Product Manufacturing.....	33	14	14	0	0	19	1229	1,128	595	595	0	0	533	570
32-Manufacturing.....	150	62	54	5	3	88	12868	11,723	5,419	4,961	221	237	6,304	3080
Primary Metal Manufacturing.....	18	5	5	0	0	13	1910	1,764	705	699	0	6	1,059	244
Fabricated Metal Product Manufacturing	35	6	6	0	0	29	2189	2,024	807	802	5	0	1,217	412
Machinery Manufacturing.....	28	12	12	0	0	16	1553	1,467	627	625	0	2	840	373
Computer and Electronic Product Manufacturing.....	5	0	0	0	0	5	346	328	127	127	0	0	201	0
Electrical Equipment, Appliance and Component Manufacturing.....	13	9	7	1	1	4	1122	1,024	594	374	175	45	430	713
Transportation Equipment Manufacturing	47	30	30	0	0	17	7219	6,391	3,598	3,427	0	171	2,793	5456
Furniture and Related Product Manufacturing.....	7	3	2	0	1	4	914	822	296	263	0	33	526	176
Miscellaneous Manufacturing.....	50	22	20	1	1	28	3603	3,303	1,556	1,171	341	44	1,747	1643
33-Manufacturing.....	203	87	82	2	3	116	18856	17,123	8,310	7,488	521	301	8,813	9017
Wholesale Trade, Durable Goods.....	28	16	16	0	0	12	867	797	399	394	5	0	398	469
Wholesale Trade, Nondurable Goods.....	49	22	21	0	1	27	2563	2,195	942	935	0	7	1,253	864
Wholesale Trade.....	77	38	37	0	1	39	3430	2,992	1,341	1,329	5	7	1,651	1333

<sup>1</sup> Source: Standard Classification, Statistical Policy Division, Office of Management and Budget, Washington, D.C.

**Table 16.--Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2005—Continued**

Industrial Group <sup>1</sup>	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Motor Vehicle and Parts Dealers.....	37	16	16	0	0	21	957	833	460	456	0	4	373	545
Furniture and Home Furnishings Stores...	4	3	3	0	0	1	44	41	25	25	0	0	16	22
Electronics and Appliance Stores.....	1	0	0	0	0	1	9	9	3	3	0	0	6	0
Building Material and Garden Equipment and Supplies Dealers.....	12	7	7	0	0	5	684	603	313	313	0	0	290	293
Food and Beverage Stores.....	55	17	17	0	0	38	5148	4,648	1,760	1,753	0	7	2,888	749
Health and Personal Care Stores.....	25	14	12	1	1	11	612	502	290	144	8	138	212	301
Gasoline Stations.....	1	0	0	0	0	1	25	25	9	9	0	0	16	0
Clothing and Clothing Accessories Stores	4	2	2	0	0	2	74	69	40	40	0	0	29	62
44-Retail Trade.....	139	59	57	1	1	80	7553	6,730	2,900	2,743	8	149	3,830	1972
Sporting Goods, Hobby, Book and Music Stores.....	1	1	1	0	0	0	19	18	11	11	0	0	7	19
General Merchandise Stores.....	9	1	1	0	0	8	431	365	98	98	0	0	267	4
Miscellaneous Store Retailers.....	8	4	4	0	0	4	236	221	135	125	0	10	86	153
Nonstore Retailers.....	2	0	0	0	0	2	3	14	5	5	0	0	9	0
45-Retail Trade.....	20	6	6	0	0	14	689	618	249	239	0	10	369	176
Air Transportation.....	10	7	5	2	0	3	178	142	80	76	4	0	62	97
Rail Transportation.....	2	2	2	0	0	0	92	81	54	54	0	0	27	92
Water Transportation.....	1	0	0	0	0	1	11	11	5	5	0	0	6	0
Truck Transportation.....	79	44	44	0	0	35	2623	2,244	1,326	1,326	0	0	918	1682
Transit and Ground Passenger Transportation.....	87	45	43	0	2	42	7011	5,994	3,082	2,773	0	309	2,912	3342
Pipeline Transportation.....	1	1	1	0	0	0	77	76	49	49	0	0	27	77
Scenic and Sightseeing Transportation....	4	2	2	0	0	2	319	281	140	140	0	0	141	136
Support Activities for Transportation.....	46	31	29	1	1	15	2930	2,603	1,337	1,177	141	19	1,266	1290
48-Transportation.....	230	132	126	3	3	98	13241	11,432	6,073	5,600	145	328	5,359	6716

<sup>1</sup> Source: Standard Classification, Statistical Policy Division, Office of Management and Budget, Washington, D.C

**Table 16.--Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2005—Continued**

Industrial Group <sup>1</sup>	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Couriers and Messengers.....	62	48	45	1	2	14	1432	1,239	854	819	13	22	385	1110
Warehousing and Storage Facilities.....	57	32	29	2	1	25	2388	2,111	1,041	922	109	10	1,070	1090
49-Transportation.....	119	80	74	3	3	39	3820	3,350	1,895	1,741	122	32	1,455	2200
Publishing Industries.....	20	9	8	1	0	11	745	647	310	310	0	0	337	349
Motion Picture and Sound Recording Industries.....	10	6	6	0	0	4	1700	1,115	729	729	0	0	386	620
Broadcasting and Telecommunications....	68	22	19	2	1	46	3607	3,355	1,326	1,309	0	17	2,029	722
Information Services and Data Processing Services.....	8	5	4	0	1	3	284	229	135	78	0	57	94	245
Information.....	106	42	37	3	2	64	6336	5,346	2,500	2,426	0	74	2,846	1936
Monetary Authorities - Central Bank.....	3	2	1	1	0	1	89	61	51	4	47	0	10	77
Credit Intermediation and Related Activities.....	3	3	2	1	0	0	46	41	39	20	19	0	2	46
Securities, Commodity Contracts and Other Intermediation and Related Activities.....	1	1	0	1	0	0	46	25	1	0	0	1	24	0
Insurance Carriers and Related Activities	1	0	0	0	0	1	26	26	11	11	0	0	15	0
Funds, Trusts and Other Financial Vehicles (U.S. Only).....	1	1	0	1	0	0	23	11	10	0	10	0	1	23
Finance and Insurance.....	9	7	3	4	0	2	230	164	112	35	76	1	52	146
Real Estate.....	10	9	8	0	1	1	200	178	102	97	0	5	76	130
Rental and Leasing Services.....	25	17	16	0	1	8	832	734	393	355	0	38	341	542
Real Estate and Rental and Leasing....	35	26	24	0	2	9	1032	912	495	452	0	43	417	672
Professional, Scientific and Technical Services.....	33	21	16	1	4	12	1143	1,013	599	373	40	186	414	550

<sup>1</sup> Source: Standard Classification, Statistical Policy Division, Office of Management and Budget, Washington, D.C

**Table 16.--Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2005—Continued**

Industrial Group <sup>1</sup>	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Management of Companies and Enterprises.....	4	1	1	0	0	3	67	47	26	26	0	0	21	33
Administrative and Support Services.....	172	109	45	41	23	63	10109	7,294	4,543	1,372	2,014	1,157	2,751	5539
Waste Management and Remediation Services.....	65	27	24	0	3	38	2210	1,945	930	871	0	59	1,015	747
Administrative and Support, Waste Management and Remediation Services..	237	136	69	41	26	101	12319	9,239	5,473	2,243	2,014	1,216	3,766	6286
Educational Services.....	46	35	20	2	13	11	4024	3,037	2,151	1,463	30	658	886	3598
Ambulatory Health Care Services.....	56	35	27	1	7	21	4496	3,018	1,687	1,534	23	130	1,331	2674
Hospitals.....	108	73	61	3	9	35	14759	11,936	6,517	5,493	210	814	5,419	8665
Nursing and Residential Care Facilities....	192	122	115	5	2	70	16225	12,077	7,356	6,763	200	393	4,721	10303
Social Assistance.....	55	38	38	0	0	17	5528	3,972	2,460	2,456	0	4	1,512	3523
Health Care and Social Assistance.....	411	268	241	9	18	143	41008	31,003	18,020	16,246	433	1,341	12,983	25165
Performing Arts, Spectator Sports and Related Industries.....	17	12	8	1	3	5	1082	856	763	199	90	474	93	999
Museums, Historical Sites and Similar Institutions.....	5	4	3	0	1	1	126	109	75	56	0	19	34	121
Amusement, Gambling and Recreation Industries.....	9	5	4	1	0	4	4293	3,534	1,266	1,205	61	0	2,268	518
Arts, Entertainment and Recreation....	31	21	15	2	4	10	5501	4,499	2,104	1,460	151	493	2,395	1638
Accommodation.....	25	14	11	0	3	11	2210	1,819	724	641	0	83	1,095	787
Foodservices and Drinking Places.....	32	12	11	0	1	20	2084	1,579	727	620	20	87	852	803
Accommodation and Foodservices.....	57	26	22	0	4	31	4294	3,398	1,451	1,261	20	170	1,947	1590
Repair and Maintenance.....	35	18	17	0	1	17	1205	1,107	570	544	0	26	537	546
Personal and Laundry Services.....	36	19	17	2	0	17	1123	930	558	527	31	0	372	634

<sup>1</sup> Source: Standard Classification, Statistical Policy Division, Office of Management and Budget, Washington, D.C

**Table 16.--Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2005—Continued**

Industrial Group <sup>1</sup>	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Religious, Grantmaking, Civic, and Professional and Similar Organizations....	32	17	12	1	4	15	1308	1,115	570	535	7	28	545	624
Other Services (except Public Administration).....	103	54	46	3	5	49	3636	3,152	1,698	1,606	38	54	1,454	1804
Executive, Legislative, Public Finance and General Government.....	3	2	2	0	0	1	29	29	24	24	0	0	5	19
Justice, Public Order, and Safety.....	9	8	2	5	1	1	505	410	289	101	157	31	121	467
Administration of Economic Programs....	1	1	1	0	0	0	22	20	15	15	0	0	5	22
Public Administration.....	13	11	5	5	1	2	556	459	328	140	157	31	131	508
Unclassified Establishments.....	56	36	33	2	1	20	1774	1,611	781	732	40	9	830	658
Total, all industrial groups.....	2,674	1,514	1,320	89	105	1,160	179812	148,436	77,857	66,345	4,131	7,381	70,579	86247

<sup>1</sup> Source: Standard Classification, Statistical Policy Division, Office of Management and Budget, Washington, D.C

**Table 17.--Size of Units in Representation Elections in Cases Closed, Fiscal Year 2005<sup>1</sup>**

Size of unit (number of employees)	Number eligible to vote	Total elections	Percent of total	Cumulative percent of total	Elections in which representation rights were won by						Elections in which no representative was chosen	
					AFL-CIO unions		Other national unions		Other local unions		Number	Percent by size class
					Number	Percent by size class	Number	Percent by size class	Number	Percent by size class		
A. Certification elections (RC and RM)												
Total RC and RM elections.....	149,602	2,233	100.0	--	1,153	100.0	90	100.0	97	100.0	893	100.0
Under 10.....	2,824	453	20.3	20.3	262	22.7	18	20.0	14	14.4	159	17.8
10 to 19.....	7,241	495	22.2	42.5	310	26.9	14	15.6	23	23.7	148	16.6
20 to 29.....	8,338	329	14.7	57.2	172	14.9	11	12.2	9	9.3	137	15.3
30 to 39.....	6,362	179	8.0	65.2	101	8.8	8	8.9	9	9.3	61	6.8
40 to 49.....	5,562	124	5.6	70.8	45	3.9	10	11.1	6	6.2	63	7.1
50 to 59.....	5,606	93	4.2	74.9	44	3.8	3	3.3	5	5.2	41	4.6
60 to 69.....	4,408	70	3.1	78.1	23	2.0	3	3.3	4	4.1	40	4.5
70 to 79.....	4,136	55	2.5	80.5	30	2.6	2	2.2	2	2.1	21	2.4
80 to 89.....	5,483	64	2.9	83.4	23	2.0	3	3.3	1	1.0	37	4.1
90 to 99.....	4,834	42	1.9	85.3	17	1.5	1	1.1	6	6.2	18	2.0
100 to 109.....	4,398	40	1.8	87.1	17	1.5	3	3.3	1	1.0	19	2.1
110 to 119.....	3,700	24	1.1	88.1	8	0.7	0	0.0	1	1.0	15	1.7
120 to 129.....	3,628	29	1.3	89.4	20	1.7	2	2.2	1	1.0	6	0.7
130 to 139.....	2,224	16	0.7	90.1	5	0.4	1	1.1	3	3.1	7	0.8
140 to 149.....	3,047	21	0.9	91.1	8	0.7	1	1.1	1	1.0	11	1.2
150 to 159.....	3,880	26	1.2	92.3	9	0.8	0	0.0	3	3.1	14	1.6
160 to 169.....	1,472	9	0.4	92.7	4	0.3	0	0.0	0	0.0	5	0.6
170 to 179.....	2,018	11	0.5	93.1	5	0.4	1	1.1	1	1.0	4	0.4
180 to 189.....	1,097	7	0.3	93.5	2	0.2	0	0.0	0	0.0	5	0.6
190 to 199.....	1,630	8	0.4	93.8	2	0.2	0	0.0	1	1.0	5	0.6
200 to 299.....	12,412	48	2.1	96.0	19	1.6	3	3.3	1	1.0	25	2.8
300 to 399.....	7,714	21	0.9	96.9	7	0.6	0	0.0	3	3.1	11	1.2
400 to 499.....	6,736	17	0.8	97.7	2	0.2	1	1.1	0	0.0	14	1.6
500 to 599.....	7,138	16	0.7	98.4	7	0.6	1	1.1	1	1.0	7	0.8
600 to 799.....	8,306	16	0.7	99.1	4	0.3	3	3.3	0	0.0	9	1.0
800 to 999.....	7,199	7	0.3	99.4	3	0.3	0	0.0	0	0.0	4	0.4
1,000 to 1,999.....	15,507	10	0.4	99.9	3	0.3	1	1.1	0	0.0	6	0.7
2,000 to 2,999.....	2,314	2	0.1	100.0	1	0.1	0	0.0	1	1.0	0	0.0

<sup>1</sup> See Glossary of terms for definition.

**Table 17.--Size of Units in Representation Elections in Cases Closed, Fiscal Year 2005<sup>1</sup>--Continued**

Size of unit (number of employees)	Number eligible to vote	Total elections	Percent of total	Cumulative percent of total	Elections in which representation rights were won by						Elections in which no representative was chosen	
					AFL-CIO unions		Other national unions		Other local unions		Number	Percent by size class
					Number	Percent by size class	Number	Percent by size class	Number	Percent by size class		
3,000 to 9,999.....	0	0	0.0	100.0	0	0.0	0	0.0	0	0.0	0	0.0
Over 9,999.....	388	1	0.0	100.0	0	0.0	0	0.0	0	0.0	1	0.1
B. Decertification elections (RD)												
Total RD elections.....	28,025	385	100.0	--	121	100.0	6	100.0	8	100.0	250	100.0
Under 10.....	394	59	15.3	15.3	6	5.0	0	0.0	1	12.5	52	20.8
10 to 19.....	1,128	74	19.2	34.5	15	12.4	0	0.0	1	12.5	58	23.2
20 to 29.....	1,227	52	13.5	48.1	13	10.7	1	16.7	1	12.5	37	14.8
30 to 39.....	1,219	35	9.1	57.1	8	6.6	1	16.7	0	0.0	26	10.4
40 to 49.....	1,147	26	6.8	63.9	11	9.1	0	0.0	0	0.0	15	6.0
50 to 59.....	1,044	20	5.2	69.1	9	7.4	0	0.0	0	0.0	11	4.4
60 to 69.....	1,116	17	4.4	73.5	6	5.0	1	16.7	0	0.0	10	4.0
70 to 79.....	903	12	3.1	76.6	9	7.4	0	0.0	0	0.0	3	1.2
80 to 89.....	1,005	11	2.9	79.5	4	3.3	1	16.7	0	0.0	6	2.4
90 to 99.....	1,032	12	3.1	82.6	4	3.3	0	0.0	3	37.5	5	2.0
100 to 109.....	497	6	1.6	84.2	2	1.7	0	0.0	0	0.0	4	1.6
110 to 119.....	584	5	1.3	85.5	2	1.7	0	0.0	0	0.0	3	1.2
120 to 129.....	444	4	1.0	86.5	3	2.5	0	0.0	0	0.0	1	0.4
130 to 139.....	791	6	1.6	88.1	3	2.5	0	0.0	0	0.0	3	1.2
140 to 149.....	426	3	0.8	88.8	1	0.8	1	16.7	0	0.0	1	0.4
150 to 159.....	305	2	0.5	89.4	2	1.7	0	0.0	0	0.0	0	0.0
160 to 169.....	488	3	0.8	90.1	3	2.5	0	0.0	0	0.0	0	0.0
170 to 199.....	943	5	1.3	91.4	1	0.8	0	0.0	1	12.5	3	1.2
200 to 299.....	3,422	15	3.9	95.3	9	7.4	0	0.0	1	12.5	5	2.0
300 to 499.....	4,774	14	3.6	99.0	8	6.6	1	16.7	0	0.0	5	2.0
500 to 799.....	0	0	0.0	99.0	0	0.0	0	0.0	0	0.0	0	0.0
800 and Over .....	5,136	4	1.0	100.0	2	1.7	0	0.0	0	0.0	2	0.8

<sup>1</sup> See Glossary of terms for definition.

**Table 18.--Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishments, Fiscal Year 2005<sup>1</sup>**

Size of establishment (number of employees)	Total number of situations	Total		Type of situations																		CA-CB combinations		Other C combinations	
		Percent of all situations	Cumulative percent of all situations	CA		CB		CC		CD		CE		CG		CP		Number of situations	Percent by size class	Number of situations	Percent by size class				
				Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class								
Totals.....	23,110	100.0	--	16,764	100.0	5,500	100.0	318	100.0	94	100.0	33	100.0	27	100.0	57	100.0	273	100.0	44	100.0				
Under 10.....	1,623	7.0	7.0	1,166	7.0	359	6.5	55	17.3	14	14.9	2	6.1	1	3.7	5	8.8	13	4.8	8	18.2				
10-19.....	1,953	8.5	15.5	1,496	8.9	366	6.7	35	11.0	14	14.9	7	21.2	0	0.0	7	12.3	22	8.1	6	13.6				
20-29.....	1,962	8.5	24.0	1,469	8.8	398	7.2	39	12.3	18	19.1	4	12.1	0	0.0	13	22.8	17	6.2	4	9.1				
30-39.....	993	4.3	28.3	768	4.6	169	3.1	22	6.9	9	9.6	1	3.0	1	3.7	3	5.3	12	4.4	8	18.2				
40-49.....	853	3.7	32.0	653	3.9	161	2.9	16	5.0	4	4.3	2	6.1	0	0.0	5	8.8	10	3.7	2	4.5				
50-59.....	1,773	7.7	39.6	1,257	7.5	437	7.9	42	13.2	7	7.4	3	9.1	0	0.0	7	12.3	19	7.0	1	2.3				
60-69.....	604	2.6	42.2	480	2.9	106	1.9	5	1.6	1	1.1	1	3.0	1	3.7	1	1.8	8	2.9	1	2.3				
70-79.....	513	2.2	44.5	393	2.3	99	1.8	13	4.1	3	3.2	0	0.0	0	0.0	3	5.3	1	0.4	1	2.3				
80-89.....	469	2.0	46.5	407	2.4	57	1.0	1	0.3	0	0.0	0	0.0	1	3.7	0	0.0	3	1.1	0	0.0				
90-99.....	266	1.2	47.6	223	1.3	41	0.7	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	2	0.7	0	0.0				
100-109.....	2,019	8.7	56.4	1,283	7.7	663	12.1	17	5.3	14	14.9	3	9.1	1	3.7	4	7.0	31	11.4	3	6.8				
110-119.....	173	0.7	57.1	140	0.8	32	0.6	0	0.0	0	0.0	0	0.0	0	0.0	1	1.8	0	0.0	0	0.0				
120-129.....	414	1.8	58.9	344	2.1	62	1.1	3	0.9	0	0.0	0	0.0	2	7.4	0	0.0	3	1.1	0	0.0				
130-139.....	150	0.6	59.6	130	0.8	20	0.4	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0				
140-149.....	183	0.8	60.4	139	0.8	37	0.7	1	0.3	1	1.1	0	0.0	0	0.0	2	3.5	3	1.1	0	0.0				
150-159.....	577	2.5	62.9	460	2.7	103	1.9	2	0.6	3	3.2	0	0.0	0	0.0	0	0.0	8	2.9	1	2.3				
160-169.....	126	0.5	63.4	99	0.6	25	0.5	1	0.3	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	2.3				
170-179.....	115	0.5	63.9	94	0.6	18	0.3	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	2	0.7	1	2.3				
180-189.....	153	0.7	64.6	111	0.7	30	0.5	4	1.3	0	0.0	1	3.0	4	14.8	2	3.5	1	0.4	0	0.0				
190-199.....	73	0.3	64.9	64	0.4	7	0.1	1	0.3	0	0.0	0	0.0	1	3.7	0	0.0	0	0.0	0	0.0				
200-299.....	1,619	7.0	71.9	1,172	7.0	402	7.3	22	6.9	1	1.1	0	0.0	5	18.5	3	5.3	13	4.8	1	2.3				
300-399.....	1,086	4.7	76.6	743	4.4	315	5.7	7	2.2	1	1.1	3	9.1	0	0.0	0	0.0	16	5.9	1	2.3				
400-499.....	594	2.6	79.1	439	2.6	139	2.5	6	1.9	1	1.1	0	0.0	0	0.0	0	0.0	9	3.3	0	0.0				
500-599.....	885	3.8	83.0	567	3.4	286	5.2	3	0.9	1	1.1	1	3.0	4	14.8	0	0.0	22	8.1	1	2.3				
600-699.....	299	1.3	84.3	228	1.4	67	1.2	3	0.9	0	0.0	1	3.0	0	0.0	0	0.0	0	0.0	0	0.0				
700-799.....	293	1.3	85.5	239	1.4	47	0.9	2	0.6	0	0.0	1	3.0	0	0.0	1	1.8	3	1.1	0	0.0				
800-899.....	228	1.0	86.5	169	1.0	55	1.0	1	0.3	0	0.0	0	0.0	1	3.7	0	0.0	1	0.4	1	2.3				
900-999.....	120	0.5	87.0	85	0.5	31	0.6	1	0.3	1	1.1	0	0.0	1	3.7	0	0.0	1	0.4	0	0.0				
1,000-1,999.....	1,605	6.9	94.0	1,042	6.2	520	9.5	8	2.5	1	1.1	2	6.1	0	0.0	0	0.0	29	10.6	3	6.8				
2,000-2,999.....	445	1.9	95.9	265	1.6	172	3.1	2	0.6	0	0.0	0	0.0	0	0.0	0	0.0	6	2.2	0	0.0				
3,000-3,999.....	223	1.0	96.9	126	0.8	89	1.6	2	0.6	0	0.0	0	0.0	0	0.0	0	0.0	6	2.2	0	0.0				
4,000-4,999.....	100	0.4	97.3	60	0.4	34	0.6	0	0.0	0	0.0	0	0.0	3	11.1	0	0.0	3	1.1	0	0.0				
5,000-9,999.....	219	0.9	98.3	146	0.9	64	1.2	1	0.3	0	0.0	1	3.0	1	3.7	0	0.0	6	2.2	0	0.0				
Over 9,999.....	402	1.7	100.0	307	1.8	89	1.6	3	0.9	0	0.0	0	0.0	0	0.0	0	0.0	3	1.1	0	0.0				

<sup>1</sup> See Glossary of terms for definitions.

**Table 19.—Litigation for Enforcement and/or Review of Board Orders, Fiscal Year 2004; and Cumulative Totals,  
Fiscal Years 1936 through 2005**

	Fiscal Year 2005									July 5, 1936 Sept. 30, 2005	
	Number of proceedings <sup>1</sup>					Percentages					
	Total	vs. em- ployers only	vs. unions only	vs. both employ- ers and unions	Board dismis- sal <sup>2</sup>	vs. em- ployers only	vs. unions only	vs. both employ- ers and unions	Board dismis- sal <sup>2</sup>	Number	Percent
Proceedings decided by U.S. courts of appeals and other courts.....	88	85	3	0	2	96.6	3.4	--	--	--	--
On proceedings for review and/or enforcement.....	73	71	2	0	0	97.3	2.7	--	100.0	11827	100.0
Board orders affirmed in full .....	56	54	2	0	1	96.4	3.6	--	50.0	7825	66.2
Board orders affirmed with modification .....	8	8	0	0	0	100.0	--	--	0.0	1553	13.1
Remanded to the Board .....	1	1	0	0	1	100.0	--	--	50.0	589	5.0
Board orders partially affirmed and partially remanded .....	6	6	0	0	0	100.0	--	--	0.0	268	2.3
Board orders set aside .....	2	2	0	0	0	100.0	--	--	0.0	1592	13.5
On petitions for contempt .....	15	14	1	0	0	93.3	6.7	--	--	--	--
Ancillary proceedings in district courts and/or bankruptcy courts .....	19	18	1	0	0	94.7	5.3	--	--	--	--
Total Court Orders .....	42	39	3	0	0	92.9	7.1	--	--	--	--
Compliance after filing of petition, before court order .....	22	20	2	0	0	90.9	9.1	--	--	--	--
Court orders holding respondent in contempt .....	8	7	1	0	0	87.5	12.5	--	--	--	--
Court orders denying petition or discontinuing proceedings at CLCB request.....	3	3	0	0	0	100.0	--	--	--	--	--
Court orders directing compliance without contempt adjudication .....	9	9	0	0	0	100.0	--	--	--	--	--
Proceedings decided by U.S. Supreme Court <sup>3</sup> .....	0	0	0	0	0	--	--	--	--	259	100.0
Board orders affirmed in full .....	0	0	0	0	0	--	--	--	--	155	59.8
Board orders affirmed with modification .....	0	0	0	0	0	--	--	--	--	18	6.9
Board orders set aside .....	0	0	0	0	0	--	--	--	--	46	17.8
Remanded to the Board .....	0	0	0	0	0	--	--	--	--	20	7.7
Remanded to court of appeals .....	0	0	0	0	0	--	--	--	--	17	6.6
Board's request for remand or modification of enforcement order denied .....	0	0	0	0	0	--	--	--	--	1	0.4
Contempt cases remanded to court of appeals .....	0	0	0	0	0	--	--	--	--	1	0.4
Contempt cases enforced .....	0	0	0	0	0	--	--	--	--	1	0.4

<sup>1</sup> "Proceedings" are comparable to "cases" reported in annual reports prior to fiscal 1964. This term more accurately describes the data inasmuch as a single "proceeding" often includes more than one "case." See Glossary of terms for definitions.

<sup>2</sup> A proceeding in which the Board had entered an order dismissing the complaint and the charging party appealed such dismissal in the courts of appeals.

<sup>3</sup> The Board appeared as "amicus curiae" in 0 cases.

**Table 19A.—Proceedings Decided by Circuit Courts of Appeals on Petitions for Enforcement and/or Review of Board Orders, Fiscal Year 2005, Compared With 5-Year Cumulative Totals, 2000 Through 2004<sup>1</sup>**

Circuit courts of appeals (headquarters)	Total fiscal year 2005	Total fiscal years 2000–2004	Affirmed in full				Modified				Remanded in full				Affirmed in part and remanded in part				Set aside			
			Fiscal Year 2005		Cumulative fiscal years 2000–2004		Fiscal Year 2005		Cumulative fiscal years 2000–2004		Fiscal Year 2005		Cumulative fiscal years 2000–2004		Fiscal Year 2005		Cumulative fiscal years 2000–2004		Fiscal Year 2005		Cumulative fiscal years 2000–2004	
			Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent
Total all circuits	73	503	56	76.7	347	69.0	8	11.0	33	6.6	1	1.4	41	8.2	6	8.2	22	4.4	2	2.7	60	11.9
Boston, MA.....	2	11	2	100.0	7	63.6	0	0.0	1	9.1	0	0.0	0	0.0	0	0.0	1	9.1	0	0.0	2	18.2
New York, NY....	3	32	2	66.7	27	84.4	1	33.3	1	3.1	0	0.0	2	6.3	0	0.0	1	3.1	0	0.0	1	3.1
Philadelphia, PA..	5	33	4	80.0	26	78.8	1	20.0	2	6.1	0	0.0	1	3.0	0	0.0	1	3.0	0	0.0	3	9.1
Richmond, VA....	12	42	7	58.3	29	69.0	1	8.3	4	9.5	1	8.3	4	9.5	2	16.7	1	2.4	1	8.3	4	9.5
New Orleans, LA.	4	25	4	100.0	16	64.0	0	0.0	5	20.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	4	16.0
Cincinnati, OH....	12	78	11	91.7	54	69.2	1	8.3	6	7.7	0	0.0	3	3.8	0	0.0	5	6.4	0	0.0	10	12.8
Chicago, IL.....	4	45	3	75.0	32	71.1	0	0.0	3	6.7	0	0.0	2	4.4	1	25.0	4	8.9	0	0.0	4	8.9
St. Louis, MO.....	8	27	5	62.5	19	70.4	2	25.0	1	3.7	0	0.0	3	11.1	1	12.5	0	0.0	0	0.0	4	14.8
San Francisco, CA	3	25	3	100.0	19	76.0	0	0.0	0	0.0	0	0.0	2	8.0	0	0.0	2	8.0	0	0.0	2	8.0
Denver, CO.....	3	16	2	66.7	12	75.0	1	33.3	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	4	25.0
Atlanta, GA.....	4	18	3	75.0	15	83.3	0	0.0	0	0.0	0	0.0	1	5.6	0	0.0	0	0.0	1	25.0	2	11.1
Washington, DC...	13	151	10	76.9	91	60.3	1	7.7	10	6.6	0	0.0	23	15.2	2	15.4	7	4.6	0	0.0	20	13.2

<sup>1</sup> Percentages are computed horizontally by current fiscal year and total fiscal years.

**Table 20.– Injunction Litigation Under Sections 10(e), 10(j), and 10(l), Fiscal Year 2005**

	Total proceedings	Injunction proceedings		Total dispositions	Disposition of injunctions				Pending in Appellate Court Sept. 30, 2005
		Pending in Appellate Court Oct. 01, 2004	Filed in Appellate Court fiscal year 2005		Granted	Denied	Settled	Withdrawn	
Under Sec. 10(e) total	1	0	1	1	1	0	0	0	0

	Total proceedings	Injunction proceedings		Total dispositions	Disposition of injunctions				Pending in District Court Sept. 30, 2005
		Pending in District Court Oct. 01, 2004	Filed in District Court fiscal year 2005 <sup>1</sup>		Granted	Denied	Settled	Withdrawn	
Under Sec. 10(j) total	9	0	9	7	4	1	2	0	2
8(a)(1)(3)	1	0	1	1	1	0	0	0	0
8(a)(1)(3)(5)	4	0	5	4	3	0	1	0	1
8(a)(1)(5)	3	0	3	2	0	1	1	0	1
Under Sec. 10(l) total	5	1	4	5	3	1	1	0	0
8(b)(4)(B)	4	1	3	4	3	1	0	0	0
8(b)(7)(C)	1	0	1	1	0	0	1	0	0

<sup>1</sup> Totals for cases identified in this table as pending on October 1, 2004, differ from the FY 2005 Annual Report due to postreport adjustments to last year's "on docket" and/or "closed figures."

**Table 21.—Special Litigation Involving NLRB; Outcome of Proceedings in Which Court Decisions Issued in Fiscal Year 2005**

[illegible]

**Table 22.—Advisory Opinion Cases Received, Closed, and Pending,  
Fiscal Year 2005<sup>1</sup>**

	Total	Number of cases			
		Identification of petitioner			
		Employer	Union	Courts	State board
Pending October 1, 2004 .....	0	0	0	0	0
Received fiscal 2005 .....	0	0	0	0	0
On docket fiscal 2005 .....	0	0	0	0	0
Closed fiscal 2005 .....	0	0	0	0	0
Pending September 30, 2005.....	0	0	0	0	0

<sup>1</sup> See Glossary of terms for definitions.

**Table 22A.—Disposition of Advisory Opinion Cases, Fiscal Year 2005<sup>1</sup>**

Action taken	Total cases closed
Total Cases .....	0
Board would assert jurisdiction .....	0
Board would not assert jurisdiction .....	0
Unresolved because of insufficient evidence submitted .....	0
Dismissed .....	0
Withdrawn .....	0
Denied .....	0

<sup>1</sup> See Glossary of terms for definitions.

**Table 23.-Time Elapsed for Major Case Processing Stages Completed, Fiscal Year 2005; and  
Age of Cases Pending Decision, September 30, 2005**

Stage	Median days
I. Unfair labor practice cases:	
A. Major stages completed -	
1. Filing of charge to issuance of complaint.....	95
2. Complaint to close of hearing.....	106
3. Close of hearing to administrative law judge's decision.....	74
4. Receipt of briefs or submissions to issuance of administrative law judge's decision.....	26
5. Administrative law judge's decision to issuance of Board decision.....	450
6. Originating document to Board decision.....	212
7. Assignment to Board decision.....	166
8. Filing of charge to issuance of Board decision.....	659
B. Age of cases pending administrative law judge's decision, September 30, 2005	
1. From filing of charge.....	348
2. From close of hearing.....	63
C. Age of cases pending Board decision, September 30, 2005	
1. From filing of charge.....	1232
2. From originating document.....	674
3. From assignment.....	609
II. Representation cases:	
A. Major stages completed -	
1. Filing of petition to notice of hearing issued.....	1
2. Notice of hearing to close of hearing.....	15
3. Close of hearing to Regional Director's decision issued.....	21
4. Close of pre-election hearing to Board's decision issued.....	405
5. Close of post-election hearing to Board's decision issued.....	153
6. Filing of petition to-	
a. Board decision issued.....	286
b. Regional Director's decision issued.....	40
7. Originating document to Board decision.....	101
8. Assignment to Board's decision.....	86
B. Age of cases pending Board decision, September 30, 2005	
1. From filing of petition.....	802
2. From originating document.....	486
3. From assignment.....	574
C. Age of cases pending Regional Director's decision, September 30, 2005.....	113

<sup>1</sup> This median does not include cases in which the Board denied requests for review.

**Table 24.—NLRB Activity Under the Equal Access to Justice Act,  
FY 2005**

Action taken		Cases/ Amount
I.	Applications for fees and expenses filed with the Board under 5 U.S.C. § 504 during this fiscal year:	
	A. Number of applications filed:.....	3
	B. Decisions in EAJA cases ruled on by the Board during this fiscal year (includes ALJ awards adopted by the Board, and settlements):	
	Granting fees:.....	0
	Denying fees:.....	2
	C. Amount of fees and expenses in cases listed in B, above:	
	Claimed:.....	\$127,366.53
	Recovered:.....	0
II.	Petitions for Review of Board Orders denying fees under 5 U.S.C. § 504:	
	A. Awards granting fees (includes settlements):.....	0
	B. Awards denying fees:.....	0
	C. Amount of fees and expenses recovered pursuant to court award or settlement (includes fees recovered in cases in which court finds merit to claim but remands to Board for determination of fee amount):.....	0
III.	Applications for fees and expenses before Circuit Courts of Appeals under 28 U.S.C. § 2412:	
	A. Awards granting fees (includes settlements):.....	1
	B. Awards denying fees:.....	0
	C. Amount of fees and expenses recovered:.....	\$16,516.73
IV.	Applications for fees and expenses before District Courts under 28 U.S.C. § 2412:	
	A. Awards granting fees (includes settlements):.....	0
	B. Awards denying fees:.....	1
	C. Amount of fees and expenses recovered:.....	0